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Second Session—Twenty-Sixth Parliament
1964-1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To which was referred the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses".

The Honourable **SALTER A. HAYDEN**, *Chairman*

WEDNESDAY, MARCH 3, 1965

THURSDAY, MARCH 4, 1965

No. 1

WITNESSES:

Mr. Gordon G. Cushing, Assistant Deputy Minister of Labour; Miss E. Lorentsen, Director, Legislation Branch, Department of Labour; Mr. H. S. Johnstone, Director, Labour Standards Branch, Department of Labour. Canadian Trucking Associations: Mr. J. A. D. Magee, Executive Secretary; Mr. J. Donaldson, Manager, Motor Transport Industrial Relations Bureau. Dominion Marine Association: Capt. P. R. Hurcomb, General Manager; Mr. J. A. Bourne, Counsel, Shipping Federation of B.C.; Mr. John D. Leitch, President, Upper Lakes Shipping Company; Mr. T. Houtman, Personnel Manager, Upper Lakes Shipping Company. Railway Association of Canada: Mr. W. T. Wilson, Vice-President, Personnel, Canadian Pacific Railway; Mr. A. M. Hand, Manager, Labour Relations, Canadian Pacific Railway; Mr. T. A. Johnstone, Assistant Vice-President, Labour Relations, Canadian National Railways. Canadian National Railways: Mr. W. T. Wilson, Vice-President; Mr. S. S. Chambers, General Manager of Hotels.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Leonard	Taylor
Crerar	Macdonald (<i>Brantford</i>)	Thorvaldson
Croll	McCutcheon	Vaillancourt
Davies	McKeen	Vien
Dessureault	McLean	Walker
Farris	Molson	White
Fergusson	Monette	Willis
Flynn	O'Leary (<i>Carleton</i>)	Woodroow—(50).
Gelinas		

Ex officio members: Brooks, and Connolly (*Ottawa West*).

(Quorum 9)

1073500

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 3, 1965.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Connolly, P.C., for second reading of the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and business.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 3, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.30 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Brooks, Connolly (*Ottawa West*), Cook, Flynn, Gershaw, Gouin, Isnor, Kinley, Leonard, McCutcheon, Pouliot, Power, Thorvaldson and Woodrow. (17).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and business", was read and considered.

The following witnesses were heard:

Mr. Gordon G. Cushing, Assistant Deputy Minister of Labour.

Miss E. Lorensten, Director, Legislation Branch, Department of Labour.

Mr. H. S. Johnstone, Director, Labour Standards Branch, Department of Labour.

At 10.10 p.m. the Committee adjourned until Thursday, March 4th, at 11.30 a.m.

Attest.

F. A. Jackson,
Clerk of the Committee,

THURSDAY, March 4, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Blois, Bouffard, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Gershaw, Gouin, Hugessen, Isnor, Kinley, Lambert, Leonard, McCutcheon, McKeen, Power, Thorvaldson, Vaillancourt, White and Woodrow. (26).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses", was further considered.

The following witnesses were heard:

Canadian Trucking Associations:

Mr. J. A. D. Magee, Executive Secretary.

Mr. J. Donaldson, Manager, Motor Transport Industrial Relations Bureau.

Dominion Marine Association:

Capt. P. R. Hurcomb, General Manager.

At 1.00 p.m. the Committee adjourned.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Blois, Bouffard, Burchill, Choquette, Croll, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Isnor, Kinley, Lambert, Leonard, McCutcheon, McKeen, Power, Thorvaldson, and Woodrow. (23)

The following witnesses were heard:

Dominion Marine Association:

Capt. P. R. Hurcomb, General Manager.

Mr. J. A. Bourne, Counsel, Shipping Federation of B.C.

Mr. John D. Leitch, President, Upper Lakes Shipping Company.

Mr. T. Houtman, Personnel Manager, Upper Lakes Shipping Company.

Railway Association of Canada:

Mr. W. T. Wilson, Vice-President, Canadian National Railways.

Mr. G. A. Richardson, General Secretary, Railway Association of Canada.

Mr. D. I. McNeill, Q.C., Vice-President, Personnel, Canadian Pacific Railway.

At 3.00 p.m. the Committee adjourned.

At 5.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Brooks, Burchill, Choquette, Cook, Fergusson, Gershaw, Hugessen, Isnor, Kinley, Lambert, McCutcheon, Pearson, Power, Roebuck, Thorvaldson and Willis. (19).

The following witnesses were heard:

Railway Association of Canada:

Mr. A. M. Hand, Manager, Labour Relations, Canadian Pacific Railway.

Mr. T. A. Johnstone, Assistant Vice-President, Labour Relations, Canadian National Railways.

At 6.00 p.m. the Chairman having vacated the Chair, it was agreed that the Honourable Senator Hugessen become Acting Chairman.

Canadian National Railway:

Mr. W. T. Wilson, Vice-President.

Mr. S. S. Chambers, General Manager of Canadian National Railways Hotels.

At 6.40 p.m. the Committee adjourned until Tuesday next, March 9, at 11.00 a.m.

Attest.

F. A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE EVIDENCE

OTTAWA, Wednesday, March 3, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-126, respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses, met this day at 8.30 p.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: We have a quorum. I call the meeting to order. We have before us Bill C-126.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Senator McCUTCHEON: Having got it on the record, I want to say that first I have a very strong objection to having committee meetings on Wednesday night. That is the one night in Ottawa that is supposed to be free, and a number of us have had to cancel engagements in order to be here this evening. I should further like to put it on record that I do not think we are going to be prepared to do it again. It is not our responsibility that there is this—what shall I say—this great zeal to get this bill through, and frankly I object to breaking down what is tradition in this house.

A second point I would like to make is that my colleagues sitting on the left of the Speaker have a very important engagement tomorrow morning, and they will not be able to attend a meeting of this committee at that time. We are quite willing to attend tomorrow night, since it is not traditionally a free night, and we are quite willing to meet on Friday morning, but we are not prepared to meet tomorrow.

The CHAIRMAN: We will deal with that when we come to the stage of adjournment tonight. However, I would like to mention that when I indicated last night that the committee was going to sit tonight you said "Don't make it eight o'clock, make it 8.30." Therefore I made it 8.30. However, that does not bind you to anything.

Senator ISNOR: Who said that?

The CHAIRMAN: The senator who has just spoken.

Senator THORVALDSON: May I make a remark along another line before we start. I have been in touch early this afternoon and again within the last 10 minutes with people in Winnipeg who are most concerned about this bill and have a great interest in it, and they want to be heard by this committee. Unfortunately, they were caught off guard completely because of the fact of this bill's being sent to this committee this evening.

As you understand, Mr. Chairman, it would have been very easy for me, or others, to have adjourned the debate this afternoon so that it would have continued tomorrow, and those who want to be heard would not have had the problem they will have if this committee proposes to rush through its proceedings too fast.

I am aware of the fact that you would like to continue tomorrow morning. As it happens I cannot be here tomorrow morning on account of another engagement, and neither can these people from Winnipeg be here tomorrow at any time. They can, perhaps be here on Friday. I do not know if the committee would want to sit on Friday, or whether, indeed, it will be possible to obtain a quorum on Friday.

Consequently, I have been urged to make the suggestion to the committee that as these people find it difficult to be here this week they might be allowed to make their representations next week. I say this, Mr. Chairman, because it was not expected by any of them that the bill would obtain second reading this afternoon.

I repeat that if I thought there was to be any problems of this kind it would have been a simple matter to adjourn the debate in the Senate this afternoon so that it would have had to continue tomorrow. In that event this meeting could not have commenced until Friday.

Having said that I will leave the matter with you because I know you are very concerned to see that everybody who wants to be heard on an important bill like this has the opportunity of being heard.

The CHAIRMAN: I should tell the committee at this stage that it is proposed, first of all, to go through the bill clause by clause, and obtain any explanations we need of any clause this evening.

Senator McCUTCHEON: When is the minister going to appear?

The CHAIRMAN: Tomorrow. Then, so far as the appearances are concerned, the Railway Associations, both CN and CP, called me about three-quarters of an hour ago to say that they will be here tomorrow morning at around 11.30. For some time the Dominion Marine Association, the Upper Lakes Shipping Company and the Canadian Trucking Association have been in direct touch with the Clerk of Committees. They are here now and are expected to be heard either this evening or tomorrow.

Then, there is a number of people who said that they were going to appear but who have now notified us that they are not going to appear. They are the Shipping Federation of Canada, the Shipping Federation of British Columbia, the Northwest Line Elevator Association and the Canadian Ship Owners' Association.

That is the state of things at this moment. Any representations there are to be made about further hearings can be made later in the evening, I think, after we have gone as far as we can with the explanations of the bill.

Senator SMITH (*Queens-Shelburne*): May I at this moment bring to your attention, Mr. Chairman, the fact that there are some people here representing the British Columbia Shipping Federation. They have not quite decided whether to give evidence to the committee but—

The CHAIRMAN: Yes, the clerk had a telephone call from Mr. Taylor advising him that they would not appear. By that they meant that they were not going to submit evidence. Of course, they can still change their minds.

Senator SMITH (*Queens-Shelburne*): Mr. J. A. Bourne is here. He is the solicitor representing the British Columbia Shipping Federation.

The CHAIRMAN: If they decide they wish to be heard then they will be.

Senator SMITH (*Queens-Shelburne*): Yes. I just thought I should bring that to your attention.

Senator ISNOR: Is there any word from the Security Storage Company Limited?

The CHAIRMAN: No, we have nothing on record. I should tell you that the officials from the Department of Labour who are appearing tonight are Mr.

G. G. Cushing, Assistant Deputy Minister; Miss E. Lorensten, Director, Legislation Branch, and Mr. H. S. Johnstone, Director, Labour Standards Branch. Mr. Cushing is going to give the explanations, and if he requires any assistance he will call on the others.

We have provided for the *Hansard* report, and my suggestion is that we now start in to deal with the bill, clause by clause. Clause 2 is headed "Interpretation". Do you think that in the definitions there is anything that requires explanation?

Senator LEONARD: Mr. Chairman, there are witnesses here who want to be heard tonight, and I am wondering if we should not hear them first.

The CHAIRMAN: I think the committee should obtain some understanding of the bill in such an examination as I have proposed before we hear witnesses. That is my feeling, but I am in the hands of the committee.

Senator THORVALDSON: Many of us have been studying this bill for some time, and we think we know something about it. Consequently, if there are people here who want to be heard I do not see why we should not hear them now.

Senator McCUTCHEON: Mr. Chairman, I have had experience in sitting around Ottawa for some time waiting to make representations. I think we ought to hear the officials and the minister, and then hear the representations.

The CHAIRMAN: That is a preferred course of action, and that is the way I feel about it.

Senator THORVALDSON: Then I will agree to that. We shall see how we get along. If we have some time left by 10 o'clock perhaps we might hear one witness.

Senator KINLEY: You do not intend to pass any sections?

The CHAIRMAN: No, we are going to hear representations so it would be silly to pass any section until we have heard any representations there are to be made in respect of it.

Senator KINLEY: It is just instruction?

The CHAIRMAN: Yes, education. Does the committee feel it needs any explanation of any of the definitions in the interpretation section?

Senator McCUTCHEON: Could not Mr. Cushing run through the section and tell us what it means?

The CHAIRMAN: Yes, but I am thinking of the subparagraphs. I do not think we need to waste time on this. Are there any items in section 2 that you want particularly to call our attention to, Mr. Cushing?

Senator KINLEY: This section indicates that you can deal with a labour union or one employee. You can deal with the personnel or the union; is that it?

The CHAIRMAN: Section 2 is the definition section. It defines the terms that occur elsewhere in the bill.

Senator KINLEY: Well, it says that "collective agreement" means an agreement in writing between an employer or an employer's organization—

The CHAIRMAN: That is a definition of "collective agreement".

Senator KINLEY: An employer has to deal with a labour union; that is one thing, but can he also deal individually with people? If you hire a man can you deal with him?

The CHAIRMAN: We are rushing ahead now. The bill provides that if there is a collective agreement and that collective agreement gives benefits greater than this bill provides then the employees get the greater benefits; if the benefits are less then they get the benefits provided by the bill.

Mr. CUSHING: That is right. Mr. Chairman, I draw the attention of the committee to subsection (e) at the top of page 2, and also to subsection (g) on page 2, because in them you will find the expressions "federal work, undertaking or business" and "industrial establishment" throughout all of the provisions of the bill, and I thought I might explain them. "Federal work, undertaking or business" covers the complete operation. "Industrial establishment" covers any one part of a particular operation. I think the railways might be the best example of this, where the federal work, undertaking or business is the whole railway operation, and the industrial establishment might be the running trades of that operation, or the sleeping and dining car service.

It might be a bit confusing sometimes where you see the words "industrial establishment" compared with "federal work, undertaking or business". This is to define the two different parts. Naturally, of course, they appear more often in certain parts of the bill than in others.

The other definitions are fairly clear, I think. There is "standard hours of work" in subsection (1) and, of course, under Part I of the bill that means an eight-hour day and a 40-hour week. This is why it says it is described in section 5.

Senator ISNOR: What about section (d), Mr. Chairman? It reads:

"employer" means any person who employs one or more employees.

I have in mind one employee of a household such as a caretaker or a gardener. Does one person in a household come under that heading?

The CHAIRMAN: No. First of all, it must be in relation to—

Senator ISNOR: I am speaking of subsection (d).

The CHAIRMAN: But you have to look at it in relation to (e) and (g). It must be a federal work, undertaking or business, or it must be an industrial establishment.

Senator BLOIS: Mr. Chairman, may I ask if "industrial establishment" covers any industrial establishment with a contract from the Canadian Government?

Mr. CUSHING: A contract?

Senator BLOIS: Yes, a contract to supply anything that the Government might want.

Mr. CUSHING: No, because if you take a look at the definition of a federal work, undertaking or business—

Senator BLOIS: Yes, I did that, but I thought there seemed to be a contradiction.

Mr. CUSHING: When you get to the application clause you will find it says:

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping . . .

and so on. When you get down to—

The CHAIRMAN: This is clause 3 that we are now looking at.

Mr. CUSHING: Yes, but I wanted to make it abundantly clear that the operation must be upon or in connection with the operation of a federal work, undertaking or business.

Senator BLOIS: Yes, but I am thinking of a contract that someone might have to supply the federal Government—

Mr. CUSHING: A contract for the construction of a new building?

Senator BLOIS: Not necessarily. I was thinking of a contract to supply uniforms for the armed forces.

Mr. CUSHING: No.

Senator BLOIS: It would not be covered?

Mr. CUSHING: Not by this legislation.

Senator BLOIS: I have been asking about these "industrial establishments".

Mr. CUSHING: It is not covered by this legislation.

Senator McCUTCHEON: Mr. Cushing, in explaining subsection 3, referred to running trades, dining car trades, and I wonder if he would explain that a little bit and tell us just what he had in mind?

Mr. CUSHING: We will go back to the railway operation. You have a number of operations within railroading. I refer to the sleeping and dining car services, as a part of railroading. The running of trains is part of the railroading—

Senator McCUTCHEON: I would think it is a very important part.

Mr. CUSHING: And there is the repairing of the locomotives. These are all parts, and it might be appropriate to define any one part of these rather than the whole industrial aspect. I think you will find that this will apply particularly when we come to clause 51 or any part of the hours of work part, where there is provision for the minister to defer the operations of part I to federal work undertaking or business, or to an industrial establishment. It might be that deferment would apply to one part of railroading but not necessarily to all railroading. This is why it is important to have a definition for part of an over-all operation.

Senator McCUTCHEON: What you are suggesting, I take it, is that under section 51 there might be a temporary, or even a permanent exemption for the running trades and the dining and sleeping car section of the railroads?

Mr. CUSHING: But not to all of the railroad operation, just to that part of it.

Senator McCUTCHEON: Of course, the other railroad operations are not really affected?

Mr. CUSHING: No.

Senator FLYNN: Definition (g) says that "industrial establishment" means any federal work, undertaking or business and includes such branch, section or other division of the federal work . . .".

I understand you would consider a railway as a federal work. Would that include any operation of a railway company, such for instance as the Chateau Laurier here?

Mr. CUSHING: Yes.

Senator FLYNN: As a branch of the railway?

Mr. CUSHING: C.N.R. hotels are under federal jurisdiction.

Senator McCUTCHEON: You have got this great anomaly here, that the C.N.R. hotels have been declared a work of benefit, for the people of Canada, and C.P.R. hotels are not, so this will build up the greatest anomaly in the world coupled with the fact that these C.N.R. hotels rented to Hilton are not going to be under this.

Senator FLYNN: They said they are going to be.

Senator McCUTCHEON: Not the C.N. hotels that are rented.

Senator FLYNN: You mean not the Queen Elizabeth but the Chateau Laurier?

Senator McCUTCHEON: It is nothing but building up the greatest anomaly.

Senator FLYNN: Would you think the provincial jurisdiction would apply?

Mr. CUSHING: No.

Senator THORVALDSON: Is Senator McCutcheon right in saying that this bill will refer to C.N.R. hotels operated by the railway but not to C.N.R. hotels operated by the Hilton chain? I would like to be clear on that point.

Senator McCUTCHEON: I am quite clear on it.

Mr. CUSHING: That is a question that has not been raised and I am not trying to give an answer tonight. I would like to check with our legal department.

The CHAIRMAN: That is reserved, then.

Senator THORVALDSON: I would make a comment that, if Senator McCutcheon is correct on that, there will be a tremendous incentive for the C.N.R. hotels system to divest itself of control and management of every hotel in its chain and turn them over to Hilton or someone else. Consequently, I think this is a matter of great importance, to get the legal opinion.

The CHAIRMAN: Senator, it has been noted and we will get the answer as to what is the interpretation intended by the department.

Senator McCUTCHEON: That would be a good thing for the country, because it is only hotels operated by Hilton that make any money.

Senator FLYNN: Would you make no difference between the Hilton owned by the C.N.R. and one owned by the C.P.R. or, to be more precise, between the Chateau Laurier and the Chateau Frontenac?

Mr. CUSHING: There is a difference in the legislation now, in that C.N.R. hotels being part of the railway system have been declared under the provisions of the act, as Senator McCutcheon has said.

Senator McCUTCHEON: C.N.R. is worked for the "general advantage of Canada", and the C.P.R. is worked. So there you are.

Senator FLYNN: So it would not be an interpretation of the definition of "industrial establishment" that would make the difference?

Mr. CUSHING: No.

Senator FLYNN: It is only because C.N.R. has been declared work for the advantage of Canada.

The CHAIRMAN: That is it.

Senator McCUTCHEON: Some people question whether that is a good declaration.

Senator FLYNN: I cannot imagine—

Senator THORVALDSON: In regard to paragraph (g) "industrial establishment", I would like to know for instance whether "industrial establishment" would include a factory that is privately owned but is devoted entirely to the manufacture, say of military uniforms for the Department of National Defence and so on?

Mr. CUSHING: Not as long as it holds contracts of supply to the federal Government. This would be a contract for the supply of uniforms.

Senator BLOIS: And that would not be covered.

The CHAIRMAN: Clause 3, application of the act, will you explain that, Mr. Cushing?

Mr. CUSHING: This is a very standard clause that appears in all labour relations legislation we have. It is required under section 91 of the British North America Act, with very minor exceptions, appears in our Industrial Relations and Disputes Investigation Act, the Equal Pay Act, the Annual Va-

The CHAIRMAN: You mean the existing Annual Vacations Act?

Mr. CUSHING: Yes, the existing Annual Vacations Act.

Senator McCUTCHEON: I would like Mr. Cushing to direct his attention to subclause (3) of clause 3 of the bill and ask him why he makes Mr. Nix, Chairman of the Bank of Nova Scotia, an underprivileged person who is allowed to work more than 48 hours a week.

Mr. CUSHING: I think it is generally accepted in labour standards legislation of this kind that it does not apply to management or superintendents. Similar provision applies in provincial legislation. There is a recognition, I think, of management rights and it might be rather difficult to administer this type of legislation if it were to apply to managers and superintendents, and the presidents of banks, and so on.

Senator McCUTCHEON: You mean, you could not help them thinking while they are at home at night.

The CHAIRMAN: I will report to Mr. Nix your great interest in his welfare.

Senator McCUTCHEON: Thank you.

Senator FLYNN: The witness has indicated that this delegation of the jurisdiction of the act is the same as that which appears in two or three other acts, which is true. My first question is this. The main difference would be in paragraph (g)—banks do not appear, I understand, in industrial disputes?

Mr. CUSHING: I do not believe banking appears in the Industrial Disputes Investigation Act, which was the first legislation of this kind, but it does appear in subsequent legislation.

Senator FLYNN: Regarding paragraphs (a), (c) and (d). Do you think these paragraphs could not be better drafted? There is certainly repetition in these. Furthermore, I think there is a grey area there. You will note "for or in connection with navigation and shipping"—stevedoring, for instance—shipping, things like that—where do they get into the definition of navigation?

Mr. CUSHING: I think I would ask Miss Lorentsen to reply to this as she dealt with this part of the act.

Miss LORENTSEN: These terms are kept in the same language as they are in the I.R.D.I. Act—for one reason—because it is very close to the language of the B.N.A. Act, and for another, because the I.R.D.I. Act was referred to the Supreme Court of Canada as to its validity, in 1955. These are the terms that the court considered at that time and found within the powers of Parliament; so it seems appropriate to keep these words even though there is, as you say, some duplication here.

Then you asked the question how far this goes in connection with shipping. We know it includes stevedores. That was certainly established in that case, and in general it must include other services closely connected with shipping. It would not go so far, I think, as to cover building of ships, or such remote things.

Senator THORVALDSON: It would include stevedores?

Miss LORENTSEN: Yes, it would.

The CHAIRMAN: I think that was a direct question resolved in that reference, was it not?

Senator McCUTCHEON: With regard to subsection (f), what will that do to the commentators on the C.B.C.?

The CHAIRMAN: I would expect that they are doing better than this minimum rate.

Senator McCUTCHEON: Everybody is doing better—90 per cent of the people are doing better than these minimum wages. We are not talking about that. I am talking about their hours of work, and standard holidays.

The CHAIRMAN: It is part of the bill.

Senator McCUTCHEON: It is part of the bill, but I am not concerned about that part of the bill.

The CHAIRMAN: What about hours of work in relation to item (f)?

Mr. CUSHING: The Canadian Broadcasting Corporation will be covered by the provisions of this legislation as an employer.

Senator McCUTCHEON: That will raise the question of the amount of money we will have to provide for the C.B.C. to spell off these announcers and commentators.

The CHAIRMAN: Do they work eight hours a day?

Senator McCUTCHEON: I suspect that some are on duty much longer than that. Again, has Mr. Cushing anything to say on that?

Mr. CUSHING: Well, we have not gone into any great detail with the Canadian Broadcasting Corporation, nor have they come forward to the department with their problems. So at this particular moment I cannot say whether any difficulties as to hours have arisen or not. However, there are within the provisions of Part I—Hours of Work—two or three methods to resolve their problem if they are working in excess of the eight hours a day and 40 hours a week, but not on a continuous basis; in other words, intermittently. They might work 12 hours one day, and five hours the next, and there is provision under clause 5(2), of course, that this can be averaged out.

The Minister of Labour has already announced that for some types of work it will require averaging at least up to a year. The provisions of clause 5(2) state that hours of work can be averaged over two or more weeks; so there is no limitation, and presumably it could go on for a full year. This would be one way in which the Canadian Broadcasting Corporation could resolve some of the problem and possibly save themselves overtime pay.

Senator McCUTCHEON: Does the averaging save them overtime pay?

Mr. CUSHING: Yes. If they were to work 50 hours one week and 30 hours the next week, and averaged this out to 40 hours for each week, there would be no overtime required, and they could do this up to a year, as the minister announced. This would be a method of saving overtime pay, if this could be used. It also might be that the Canadian Broadcasting Corporation, or the radio industry as a whole, might wish to avail themselves of clause 51 and make representation to the minister requesting a deferment and possibly also an inquiry which might require a deferment or suspension of Part I—Hours of Work—for the industry as a whole, and this could be handled either by an individual employer or an industry.

So there are certain provisions within the bill that an employer or an industry can use to their advantage in relieving their problems under Part I—Hours of Work.

Senator THORVALDSON: May I ask a question on that point? Parliament has legislated in regard to these matters. So you are suggesting that under section 51 there might be relief. I suppose it is common ground that on this question it is merely the minister who makes the decision in that event?

The CHAIRMAN: No. There is provision for an inquiry, in which you set up some person with full powers under the Public Inquiries Act, and he reports to the minister, and then the minister gives his recommendation.

Senator THORVALDSON: Perhaps I might suggest that this committee consider whether the recommendation should not be made by Parliament.

The CHAIRMAN: Well, we will come to that. I think section 51 will deal with that.

Senator FLYNN: Probably it is a question of semantics, Mr. Chairman, the reason why they did not change the wording of the previous act. But does not a radio broadcasting corporation include a television station?

Mr. CUSHING: Miss Lorentsen can answer that in connection with the Broadcasting Act.

Miss LORENTSEN: Radio broadcasting is a scientific expression which includes television, transmission of pictures and sound, and you find that defined in the Radio Act and in the Broadcasting Act to mean the dissemination of any form of radio electric communication. So I think there is no question that the term covers both radio and television.

The CHAIRMAN: Senator Thorvaldson?

Senator THORVALDSON: My question is this. I think it is well known that there are many people employed in radio and television—let us say the C.B.C.—for various hours. I think it is probably common ground that the really high salaried people and valuable people do not limit themselves to eight hours a day and vacations, that they get their salaries and reach their status in the companies for which they work because of their value as skilled people, producers, and so on. What would be the situation in regard to those people who work much longer than eight hours a day and earn those good salaries? Under the bill, how will that be dealt with, and under what heading will it be, when it comes to management and people who work more than 40 hours a week and want more pay?

Mr. CUSHING: Most of those people might be in the position of exercising management function.

Senator THORVALDSON: No; I am not speaking entirely of those. We must recognize that there are hundreds of people with the C.B.C. who have nothing to do with management function, but are in salaried brackets of anything from \$15,000 to \$30,000 or \$40,000, because they are valuable people to the corporation.

The CHAIRMAN: I think in Part II that is covered by regulations. I am not saying that you could deliberately write a regulation and say somebody is a manager, who does not perform that function; but within certain limits the regulations could delimit the number who would be out from under the word "management."

Senator SMITH (*Queens-Shelburne*): Would that not be taken care of by (b)?

The CHAIRMAN: Except that (b) deals with professions.

Senator McCUTCHEON: No. The Chairman and I do not regard these people as professionals.

Senator THORVALDSON: In reply to the Chairman, I am not very happy about seeing those things dealt with through regulation.

The CHAIRMAN: All I said was that within limits the problem could be dealt with by regulation; but it may pose other problems and we may have to deal with this bill again when we run into a lot of the problems.

Senator FLYNN: I have one last question, Mr. Chairman.

The CHAIRMAN: Do not say "last question," because you can ask any question you like.

Senator FLYNN: Thank you. In connection with the paragraph "any bank," I think the witness has indicated that this was an addition to the definitions of the area of the other acts that deal with the federal field in matters of labour relations.

Mr. CUSHING: Only the Industrial Relations Dispute Investigations Act. It is in the Equal Pay Act and the Annual Vacations Act.

Senator FLYNN: If this would not be mentioned it would be covered by provincial legislation in relation to the minimum wages or conditions of work?

Mr. CUSHING: No, it would not be covered by any legislation.

Senator FLYNN: That is your opinion?

Mr. CUSHING: This has been tested in the courts also, where some of the provincial governments have tried to apply their labour standards legislation to classes of employment coming under federal law, and this has failed.

Senator FLYNN: Would you indicate whether this has been applied in the case of a bank?

Mr. CUSHING: If you will let me look at my cases that have been referred to in the courts. I do not know whether banking has even been tested or not. I do not think it has. No, banking has not been tested in the courts.

Mr. FLYNN: I do not think you would go as far as saying it is essential to banking legislation to provide for minimum salaries of bank clerks?

Mr. CUSHING: The banking industry will be the most affected by the wage section of this bill, from the surveys we have taken.

Mr. FLYNN: I know it may be, but it will not change the banking system of Canada for all that.

Senator McCUTCHEON: May I ask a question, Mr. Chairman? Is it the opinion of Mr. Cushing that this bill, if passed, will apply to the Canadian Permanent Trust Company and will not apply to the Montreal Trust Company?

Mr. CUSHING: I do not think it will apply to either, Senator McCutcheon.

Senator McCUTCHEON: I am just asking, are you saying this will not apply to federally incorporated trust companies and insurance companies?

Mr. CUSHING: Right.

Senator McCUTCHEON: You say it will not?

Mr. CUSHING: It only applies to those banks that come under the Bank Act.

Senator McCUTCHEON: I am talking about trust companies.

Mr. CUSHING: No, it does not apply to trust companies.

Senator McCUTCHEON: It does not apply to trust companies and insurance companies, notwithstanding the fact they are incorporated by federal legislation?

Senator LEONARD: Or any other federally-incorporated company?

Mr. CUSHING: This is what we have been advised.

Senator McCUTCHEON: Then we might ask the minister about that.

The CHAIRMAN: I do not think the mere mention of a private bill here incorporating a company to do something or other brings all the employees of that company under this legislation, without specific reference to it.

Senator McCUTCHEON: I will reserve that question, Mr. Chairman.

The CHAIRMAN: This was not a judgment I gave.

Senator THORVALDSON: Mr. Cushing has just said this bill would have a greater impact on banks and their employees than any other group in Canada. Might I ask this question: Is part of the reason for the bill, then, that banks have not been treating their employees fairly—in other words, that bank employees generally have not been paid at the rate of the minimum wage of \$1.25 and that their hours of work are too long? Mr. Chairman may not deem it fair of me to ask that question of Mr. Cushing, and if so, you can disallow the question.

The CHAIRMAN: I would think the question is: Why did he say it might have that impact?

Mr. CUSHING: Just on matters of wages. We were talking about wages at the time. I do not mean to imply that all four parts of the act apply more strongly to banks, but just the wage clause.

The CHAIRMAN: And hours of work?

Mr. CUSHING: No, just the minimum wage.

Senator McCUTCHEON: I did not get that.

The CHAIRMAN: The witness indicated this bill might have greater impact on banks than any other group with respect to the minimum wage.

Senator McCUTCHEON: I want to come back to my previous question. There is a broad, general statement here that:

This Act applies to . . . the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada . . .

There is a bill that is going to come before us—I think it is public knowledge—probably next week, where it is very clear that the federal Government is saying to Senator Leonard's trust company, "Your shares may only be registered with certain people" and so on. And, of course, the Montreal Trust Company, the Royal Trust Company and a number of others I could mention are outside our jurisdiction. I am asking Mr. Cushing again: Does this bill apply to federally-incorporated trust companies and insurance companies, because in this other bill, which I believe is about to get third reading in another place, it is made very clear that it does apply, and the only basis of jurisdiction can be that it is assumed by the Government to be within the federal jurisdiction.

The CHAIRMAN: Mr. Cushing has answered to that already. Have you any reason to change your answer?

Mr. CUSHING: No. I am not a lawyer, Mr. Chairman, but this is what we are advised by the Department of Justice and also by our own departmental solicitor.

Senator BLOIS: Judging from what I have heard, it would seem to me that a very junior clerk, male or female, going into a bank would have to start at a salary of not less than \$2,500 a year. Isn't there any way in which when they are starting their employment, in the first two or three months, they can be paid other than the same as someone who might have been there three years? It seems to me rather an unfair situation.

Mr. CUSHING: It is a minimum wage law, and it is quite conceivable the person who has been there two or three years is earning more than that minimum.

Senator BLOIS: But supposing they are not. I might explain it would seem to me that in any type of business, usually a person going in and being trained and taught the business starts at a very much lower salary than those who have been there for one, two or three years. But as I understand the act the very junior clerk—it may be someone running errands, a runner—he will get the same amount of pay on the day he starts as someone who has been there for two or three years, under the act.

The CHAIRMAN: The act just deals with a minimum wage.

Senator BLOIS: The minimum wage will be \$2,500 a year.

The CHAIRMAN: Well, let us assume it is. If any person is getting \$2,500 a year they would be in line with the requirements of this act.

Senator BLOIS: But there is no regulation that for the first few months while they are being trained, they will get less—they must get this to start with?

Mr. CUSHING: I think when we get to clause 14, which is the writing of regulations applying to the minimum wages part of the bill, you will find under (g) there is provision for:

exempting, upon such terms and conditions and for such periods, as are considered advisable, any employer from the application of section 11 in respect of any class of employees who are being trained on the job, if

the training facilities provided and used by the employer are adequate to provide a training program that will increase the skill or proficiency of an employee.

As long as an employer could justify that under the training program he was doing those things, there is provision here for a lower rate.

Senator THORVALDSON: In other words, the minister is the final arbiter? He is the one who will be entitled to make regulations, so that he will be the final arbiter as to whether a bank or certain branch of a bank has sufficient training facilities for a 17-year old clerk?

The CHAIRMAN: No, it is the Governor in Council, and not the minister.

Mr. CUSHING: The Governor in Council makes the regulations.

The CHAIRMAN: You have approved so many bills with that clause in it that it is a little late now to object.

Senator THORVALDSON: I realize that a lot of questions we are asking tonight are ones that are entirely unfair to ask of these particular people.

The CHAIRMAN: Shall we look at clause 4 now?

Senator ISNOR: Am I to understand that under (g) of clause 3, this applies to a greater extent to banks than any other industry on a comparative basis? I am going to ask you whether the trucking industry is included in your statement.

Mr. CUSHING: No, I think we were talking about the minimum wage provision when the question was asked, what effect would minimum wages have on industry. I am sorry if I have mixed up the committee on this. From the surveys taken by the Department of Labour it was found that in banking there were more employees receiving less than \$1.25 an hour than in other industries, so that the wage section of the bill, that is Part II, would have more application to banks than to other types of industry coming under this act as a whole.

The CHAIRMAN: Clause 4, shall we look at that? What have you to say about that, Mr. Cushing?

Mr. CUSHING: I think you remarked on this earlier that the provisions of the bill apply. However, if there are customs or practice or a collective agreement in effect which provide higher standards than the legislation, then the higher standards apply.

Senator McCUTCHEON: This is the "heads I win, tails you lose" section.

The CHAIRMAN: You are not suggesting that is the title we should put on it?

Senator McCUTCHEON: I am not suggesting that at all.

The CHAIRMAN: Part I, page 4, clause 5.

Mr. CUSHING: Clause 5 deals with what are called the standard hours of work—an eight-hour day, 40-hour week. And 5 (1) recognizes the principle of the 40-hour week. Clause 2, as we discussed earlier, provides that where the nature of work in an industrial establishment has irregular distribution of hours, then the regulations may be written to average the hours. That is the hours of work over a period of two or more weeks.

Senator BROOKS: Does this apply to stevedores in Halifax and Saint John?

Mr. CUSHING: This can apply to any work or undertakings coming under this particular legislation.

Senator BROOKS: I understand if they work 2,000 hours a year, that is 40 hours a week and overtime enough to give them 2,000 hours, that is considered a year's work, is that correct?

Mr. CUSHING: Two thousand and eighty hours is a full year's work.

Senator BROOKS: There is another point in that connection. We have the Unemployment Insurance Act. I know these men work over a period of four months long periods running close to 1,000 hours. When they stop they get unemployment insurance. Does that not mean that there would be a conflict between this act and the Unemployment Insurance Act?

Mr. CUSHING: There would not be any conflict, but the responsibility on an employer under this legislation would require that he retain that employee on his employees' records, if he wanted to take advantage of the averaging principle. And of course if the employee were retained on the records as an employee then he is not eligible to draw unemployment insurance.

Senator McCUTCHEON: This may solve one of our problems.

Senator BROOKS: Supposing he is not retained and in four or five months he puts in time enough to get a year's salary, can he go on unemployment insurance for the rest of the time?

Mr. CUSHING: He could do that but the employer would be required to pay him overtime for the hours he worked in excess of the normal hours he should have worked each week.

Senator McCUTCHEON: I wonder if that has been explained to the labour unions.

Senator FLYNN: Do you suggest there will be exceptions granted to stevedores with respect to the maximum of 48 hours a week provided in subsection 1 of clause 5?

Mr. CUSHING: Maximum hours, yes. The Minister of Labour has indicated that stevedoring will likely require overtime permits.

Senator FLYNN: In the St. Lawrence ports their busy time is in the summer, and in the Maritime ports the wintertime is their busy time. Can they draw unemployment insurance during the dull season?

Senator McCUTCHEON: Mr. Cushing is saying that—and we will take stevedoring as an example—if a man has put in over a period of eight months, or over a shorter period, his 2,080 hours, then either his employer has got to pay the extravagant penalties extracted by this act or he cannot draw unemployment insurance. Is that what you are saying?

Mr. CUSHING: He must be retained on the employer's payroll as an employee.

The CHAIRMAN: Clause 6.

Senator LEONARD: I want to be clear on this. I take it the penalty in this section 5 is on the employer only, is that correct?

Mr. CUSHING: Yes.

Senator McCUTCHEON: All the penalties in this act are on the employer only.

Senator ISNOR: Mr. Cushing, the minister must bear in mind that in ports like Halifax and Saint John we have only a matter of five months' employment. That means the men are only allowed to work 1,040 hours in that area. Am I right in that? Then they must go on unemployment insurance or be kept on by the employer at his risk of overpaying them?

Mr. CUSHING: Well, regulations could be written for stevedoring in Halifax to average for a shorter period of time than 12 months, but this would still require the employer to retain the employee over the period of time sufficient to average out. That is it would have to average out at a 40-hour work week if he wanted to save the cost of premium pay for overtime hours. Perhaps I should say this, however, that from our investigation of collective agreements in stevedoring, it is not going to be a cost factor because I think most collective agreements now carry overtime pay after five o'clock irrespective of the hours

of work on that particular day, and the stevedoring companies have indicated to us there is not a problem of overtime pay. There would be a problem of excess hours or maximum hours, and the Minister of Labour has already indicated that ports such as Halifax and Saint John will require overtime permits, under the provision of clause 9, during the winter months, and it may be that ports on the St. Lawrence will require overtime permits in the fall when the rush is on to clear up the shipping season. But there are provisions in clause 9 for the granting of permits, and also provision in clause 10 for the working of overtime without a permit.

Senator BROOKS: These men working overtime are not limited to 48 hours.

Senator McCUTCHEON: They have to average.

Senator BROOKS: I know, but the average is not going to be very high. Is that the limitation?

Mr. CUSHING: If there is an overtime permit. The Minister of Labour can grant a permit for more than 48 hours. There is no limit to it in general terms—if I might draw your attention to clause 9, subsection 2:

(2) No permit may be issued under subsection (1) unless the applicant has satisfied the Minister that there are exceptional circumstances to justify the working of additional hours.

Senator McCUTCHEON: But it is only by permit.

The CHAIRMAN: That's right.

Senator FLYNN: In a harbour where you have a 24-week season, the maximum numbers of hours worked at the regular rate would be something like 960 hours. After 960 hours they would be paid overtime.

The CHAIRMAN: You mean by virtue of their collective agreement?

Senator FLYNN: By virtue of this act. Forty hours for 24 weeks makes 960.

The CHAIRMAN: But the employer under section 9 can apply to get a permit.

Senator FLYNN: A permit to go over 48, but not to pay the regular time after 40 hours a week.

The CHAIRMAN: If he can succeed in averaging out to 2,080, it would be regular rates.

Senator FLYNN: I don't think so.

Mr. CUSHING: If he could average his hours out to 2,080 per year and keep the employee on his records, he could save the cost of overtime.

Senator FLYNN: You mean he could work 2,000 hours in six weeks at the maximum rate of \$1.25.

Mr. CUSHING: The committee might be interested in knowing that the highest hours of work in the port of Halifax last year for one man amounted to 2,893 hours. That was the highest there was. The averages over the whole year range all the way from 2,577 hours down to as low as 792 hours. The Shipping Federation of Canada was very good in providing us with a great amount of information on hours of work, particularly at the east coast ports and the St. Lawrence ports.

Senator ISNOR: When you speak of the employer, Mr. Cushing, I point out that there is really no employer so far as the stevedores are concerned. They are simply called in as gangs from time to time from the longshoremen's association.

Mr. CUSHING: This stevedore is the employer, and the longshoreman is the employee. I am not sure of this, but from talking to our friends in the industry I understand this is the relationship between employer and employee.

Senator ISNOR: I think there might be two so-called employer companies, but the great majority of the stevedores come under the union, and they are simply called in as Gang 1, Gang 2, Gang 3 and so on.

Senator BROOKS: I think it is the stevedore who get fees from the steamship company and he hires the men.

The CHAIRMAN: Shall we go on to clauses 5, 6 and 7?

Senator THORVALDSON: On the question of stevedores, do you know what the hourly rate of stevedores in Halifax is at the present time?

Mr. CUSHING: At this moment, I am sorry I cannot tell you. I have not their collective agreement here.

Senator THORVALDSON: I wonder if under collective agreements or otherwise it is over or under \$1.25?

Mr. CUSHING: It is certainly well above. The hourly wage of the whole stevedoring industry is certainly well above \$1.25. I do not think they are worried about the wage section.

Senator THORVALDSON: So under this bill the Halifax situation would be largely under the permit system in section 9?

The CHAIRMAN: And/or averaging.

Mr. CUSHING: If they want the provisions of section 5(2) they may have them.

The CHAIRMAN: What have you to say about clause 7, scheduling hours of work?

Mr. CUSHING: This merely points up the entitlement of at least one day of rest per week, Mr. Chairman. It provides again that there will be regulations for the accumulation of these days off. I am sure that this committee is aware that there was an amendment to this clause in the house, because it is the practice in the shipping industry to accumulate days of leave and take them at the end of a trip or at the end of a season. Clause 7 will permit this.

The CHAIRMAN: Clause 8, overtime pay.

Senator McCUTCHEON: I should like to ask a question on this, Mr. Chairman.

The CHAIRMAN: Yes, go ahead.

Senator McCUTCHEON: This is a bill respecting hours of work and minimum wages. One of the great objections I have to it, and which I will come to later when we get to the proper section, is that it cuts right through the heart of negotiated labour contracts—those that have been negotiated with powerful unions. If I read this correctly we are now saying that notwithstanding collective bargaining and so on, when the employees are required or permitted to work in excess of standard hours of work they shall be paid at a rate not less than one-and-a-half times the regular rate.

The CHAIRMAN: I am wondering whether “regular” is meant there, or does it mean the minimum rate?

Senator McCUTCHEON: It should be the minimum rate, so far as I am aware, because I know of people who get \$4 an hour. Suppose they get \$5 an hour when they work overtime. I do not think it is our policy to enter into this sort of thing.

Senator FLYNN: We are going to get into another problem. Somebody who is being paid \$2.50 an hour will not want to make overtime.

Senator McCUTCHEON: The man who is getting paid \$2.50 an hour is undoubtedly in a good bargaining position. We must not cut through all the union agreements.

The CHAIRMAN: If I might interrupt, Senator, it seems to me that the purpose of this legislation at this point is that either an employee gets the

benefit of the minimum rate or, if he has an agreement, he gets the benefit of the better rate in the agreement, but you cannot cut across both.

Senator McCUTCHEON: No. Well, this section 8 does cut across both.

The CHAIRMAN: It may. What have you to say, Mr. Cushing?

Senator McCUTCHEON: Suppose I am getting \$3 an hour. Are you going to legislate that I should get \$4.50 for overtime?

Mr. CUSHING: That is what this particular clause says.

Senator McCUTCHEON: That is all I want to know. I object to it.

The CHAIRMAN: We know what it says.

Senator McCUTCHEON: We will reserve that.

The CHAIRMAN: We are not passing any of them tonight.

Senator THORVALDSON: I should like to follow that up, particularly where you suggested, Mr. Chairman, that the effect of the legislation was that in fact the employee would get at least the benefit of section 8 or the benefit of the provisions of the union agreement.

The CHAIRMAN: No, I did not say the benefit of section 8. I am concerned about the use of the word "regular" in section 8. What I said was that I thought the scheme of the legislation was to provide that an employee either gets the benefit of the minimum rate and if he worked overtime he would get one and a half times that rate, or he is entitled to the benefit of his collective agreement if it gave him more. I thought those were the two approaches.

Senator BROOKS: The minimum rate might be less than the regular rate of pay he is getting.

Senator McCUTCHEON: Then he gets the minimum.

The CHAIRMAN: "Regular" is the word that bothers me.

Senator THORVALDSON: My question in respect of section 8 to Mr. Cushing would be this: Would a union agreement supersede...

The CHAIRMAN: Yes, that is in clause 4 that we have already discussed.

Mr. CUSHING: It would supersede it, Mr. Chairman, if the collective agreement provided the higher premium rate of pay for overtime hours.

Senator McCUTCHEON: But under section 8, if the union agreement provides for \$3 an hour for regular work and \$4 an hour for overtime, the employer will be forced to pay \$4.50 an hour, and I do not think that that was ever intended, or should be intended.

The CHAIRMAN: We have noted that one, Senator. Clause 9; we have talked so much about this already that I am wondering if there is anything else the members of the committee want to ask about it. This concerns overtime permits. Are there any further questions on it?

Senator THORVALDSON: Yes. I just want to ask Mr. Cushing whether in regard to the question of overtime permits as provided for in section 9 he has made any calculation of the additional staff that will be required in the Department of Labour to deal with its provisions.

Mr. CUSHING: Well, not specifically with respect to section 9.

The CHAIRMAN: Well, say, the whole administration.

Mr. CUSHING: Yes, in the whole administration. There will have to be additional staff for the whole administration of this legislation.

Senator THORVALDSON: I was not asking that in a critical way at all. I was just wondering if you could give a general picture of the administrative situation, because I think we are all aware of the fact that the labour departments of the provinces have very considerable administrative staffs, but nevertheless here we have a situation where your administration will have to extend to the

ten provinces of Canada. There are enormous distances to be covered, and also a great variety of industries. I am wondering if you could give us any picture of the administrative problem posed by section 9.

The CHAIRMAN: Do you mean in numbers, senator—the additional numbers of staff that may be required?

Mr. CUSHING: We anticipate adding about 35 employees to the Department of Labour, plus the 23 that are presently in the Labour Standards Branch, but this branch will, as well as administering the Canada Labour (Standards) Code also have to administer the Fair Wages and Hours of Labour Act, the Equal Pay Act, and it provides a service to the Treasury Board in the administration of the prevailing rates regulations under the Financial Administration Act, so it is not just a matter of administering one piece of legislation. There are now in that branch three very important functions, and this will be an additional function.

The CHAIRMAN: It means about 35 more people?

Mr. CUSHING: Approximately 35 more. This is what we anticipate. Mr. Chairman, let me try to be more exact. Mr. Johnstone, who is the director of the branch, says that I am shooting a little high, but I have a memo here somewhere of the amount of administration that is anticipated.

Now, we have a provision in our Fair Wages and Hours of Labour Act, which is similar to this provision, for granting overtime permits. This is on Government construction work. Here we grant permits, an average of about 200 to 225 per year, which is about 10 per cent of the total projects that come under the Fair Wages and Hours of Labour Act per year.

The CHAIRMAN: Is the figure of 35 higher or lower?

Mr. CUSHING: Thirty-five additional positions have been projected as necessary, together with the present establishment, to administer the new Labour (Standards) Code. As well as a headquarters staff in Ottawa, it is planned to have field offices located in the main centres across Canada. Initially, these will be in nine different locations, and inspection will be undertaken by staff from the field offices.

Therefore, there will be a total complement in the Labour Standards Branch of about 55 people.

Senator McCUTCHEON: What province are you discriminating against?

Mr. CUSHING: I hope you do not expect me to answer that.

The CHAIRMAN: That is a leading question.

Senator ISNOR: Still on clause 8, is there any provision for Sunday overtime in addition to the regular time and a half?

Mr. CUSHING: No. Sunday time will be the same as any other overtime if it is in excess of the 40 hours a week.

Senator ISNOR: Are Sundays and holidays the same?

Mr. CUSHING: Holiday time is on the principle of time and a half plus the regular holiday pay. We will come to that under part IV.

The CHAIRMAN: Clause 10 emergency work. This is a special situation?

Mr. CUSHING: It should be mentioned here that Senator Thorvaldson raised a question about anticipating a heavy load under clause 9. It is quite foreseeable that a lot of the overtime would be short-term overtime, and this of course will come under clause 10, for two or three reasons—accident to machinery or equipment, urgent and essential work to be done to machinery, equipment or plant, or other unforeseen or unpreventable circumstances. This is pretty broad and I would anticipate that employers might use this. The requirement of course is that they report this overtime to the Minister of Labour within 15 days after it has taken place.

I had a discussion yesterday, for example, with some of the stevedoring companies. When a ship comes to port and it is required to be unloaded rather quickly and loaded again to get it out without having to pay demurrage—I understand that, as well as in the railways there is a fairly heavy fee—it may be that they would want to invoke clause (c) of clause 10, “other unforeseen or unpreventable circumstances”.

Senator FLYNN: This is strange, because delay of a ship is certainly not unforeseeable or unpreventable. While preventable, it is not unforeseeable. A storm may hold it up.

Senator BROOKS: It may be a storm that holds it up.

Senator McCUTCHEON: What about shipping that is on schedule, that comes in at 10 o'clock at night and wants to turn out again at 3 o'clock in the afternoon. That is not unforeseeable. It is foreseeable. That is what they set themselves out to do.

The CHAIRMAN: It would not qualify under 10.

Senator McCUTCHEON: We had better put in another clause.

The CHAIRMAN: I think we have.

Mr. CUSHING: No. If they are experiencing this as a common occurrence, I presume the industry would want to apply for a permit under clause 9 for a period of time. In the port of Montreal, for example, they might find in the fall rush, that they will experience quite a bit of this type of overtime. They would be much better off in getting a permit for 90 days or 120 days for overtime above the maximum. That would be what they would do.

Senator THORVALDSON: Supposing the *Empress of Britain* or the *Empress of Canada*, under federal jurisdiction, arrived in Montreal and had an explosion in the boiler room—ordinarily, before this legislation, one would think the owners would take every step to employ all the people they could get, in order to get the vessel in condition to move again as soon as possible. Whereas now, under the provisions of this bill, instead of making contracts with people to do such things, they will, under this bill, become involved in ministerial routine, they will have to comply with section 10.

The CHAIRMAN: All they have to do is, if there is an accident, do the same as always, but they must report within 15 days from the end of the month in which these extra hours were worked.

Senator THORVALDSON: That is fine, if that is all they have to do.

Mr. CUSHING: I imagine they would do exactly the same as always.

Senator THORVALDSON: If they do not have to plead with the minister, if it is just a matter of reporting?

Mr. CUSHING: Yes.

Senator THORVALDSON: That is satisfactory.

The CHAIRMAN: Part II, at the top of page 6, clause 11, what have you to say on minimum wages?

Mr. CUSHING: This establishes minimum hourly wages of \$1.25, unless there are exceptions made. We discussed briefly, at an earlier stage, that exceptions can be made under the regulations. Also, exceptions occur under clause 13 for the employment of handicapped or disabled persons. Also, exceptions can be made under clause 12 for the employment of persons under the age of 17. Generally speaking, the \$1.25 prevails, unless there are exceptions under certain provisions.

Senator McCUTCHEON: In clause 11(2) “where the wages of an employee are computed and paid on a basis other than time or on a combined basis of time and some other basis...,” would Mr. Cushing explain what this means?

Mr. CUSHING: I will ask Miss Lorentsen to explain.

Miss LORENTSEN: It is intended to deal with such situations as a wage paid on a mileage basis rather than on a time basis.

Senator McCUTCHEON: Are you thinking of railways, running trades of the railways?

Miss LORENTSEN: Yes. Trucking is one example. It is necessary to determine some relationship here. There would be no problem except in relation to people earning around \$10 a day. If people are paid on a mileage basis and are earning much more than that, the question will be very easy to settle as to whether the payment is equal to what is required under the act or not. There would be some cases where it will be necessary to determine the relationship between the mileage rate that is being paid and the time rate.

Senator McCUTCHEON: Thank you very much. I would not think you would have much difficulty there.

Senator KINLEY: A man who is on piece work would be thinking of what he can produce during the day. If he is earning \$10—on piece work he will earn more than that—you will pay him what he makes?

Mr. CUSHING: You would want to compute his piece work earnings to an hourly rate, to divide the number of hours he worked into his piece work, to see whether he was getting the minimum wage or not.

The CHAIRMAN: There is no problem there?

Mr. CUSHING: No.

Senator LEONARD: I wonder what the answer is to Senator Macdonald's question in the chamber today, in relation to the age 17.

Mr. CUSHING: The main reason here is that the school leaving legislation in most of the provinces now provides for 16. Also, a study of the last census of Canada indicated the number of those in the 15-17 year old bracket in employment. Also, it may be that the minister could more appropriately answer this, that is policy as to what is the right age for people to be going to work in Canada, unless there are special provisions in the legislation for employment at an age younger than 17.

Senator BLOIS: In a great many of the provinces, such as my own, the school age is 16, and therefore anyone can employ a boy of that age. I am wondering why the age of 17 is mentioned in the bill; because, particularly in Nova Scotia, a great many of the boys leave school at 16—they are not good students and will not attend school. Under this measure, however, they will not be able to work. What will they do in that year, get into trouble?

The CHAIRMAN: They could still work, but if they went into a class of employment covered by this bill they would not be able to demand the minimum rate.

Senator BLOIS: But they could still work at the minimum rate.

The CHAIRMAN: They could work at any job they could get. There is no prohibition to getting a job under this legislation.

Mr. CUSHING: They could not be employed under this legislation.

The CHAIRMAN: No. Let us back up and start over. I am saying that if a lad of 16 years of age leaves school, he is not therefore violating any school provision. He can get a job and is entitled to whatever pay he can get, but he does not get any benefit under this bill. He cannot work in any category covered by this bill, but there are lots of other jobs.

Senator McCUTCHEON: That is right. Really, this bill is not very important, Mr. Chairman; that is the point, and you have admitted it.

The CHAIRMAN: I have admitted nothing, senator.

Senator SMITH (*Queens-Shelburne*): Perhaps Mr. Cushing could comment on section 12, with regard to employing a boy under the age of 17.

Mr. CUSHING: Well, again, Mr. Chairman, regulations can be set up to permit the employment of those under 17 years of age, and presumably this would be in certain types of employment where there would not be any hardship to a boy under 17 to be working in that type of employment. It might be restricted, for example, to mining—that you could not put a boy in a mine under 17, or maybe any other type of employment. It might also permit, for example, summer employment, part time employment after school and weekends, and employment of the type which would not be injurious to the health of the boy.

Senator BROOKS: What about the boy of 13 or 14 who picks berries in the summer vacations, would he be paid \$1.25 a hour?

Mr. CUSHING: No; he would not come under this legislation.

Senator McCUTCHEON: I will tell you the person who will come under it, it will be the girl of 16½ in Newfoundland who wants to work as a chambermaid or waitress in the C.N.R. hotel in St. John's, and they will not hire her because they are not going to be prepared to pay her \$50 a week. Furthermore, she cannot be hired unless the minister passes a regulation. I gather that Mr. Cushing agrees with me.

The CHAIRMAN: Well, he is an authority on Newfoundland.

Senator McCUTCHEON: Mr. Chairman, I do not understand the Department of Labour bringing in this bill. This is just cutting through the whole system of collective bargaining. Surely, with the strong trade unions which are in the companies to which most of these provisions apply, it should not be left to the minister and the Governor in Council to fix the maximum price to be charged for board or for living quarters. These are all matters for collective bargaining. This bill is going to put the Governor in Council in the collective bargaining business, and he has got no business in there. Why the trade unions have not been in here, I do not know, because these are the sort of things on which they bargain—the so-called fringe benefits which at times amount to 25 per cent or 30 per cent of wages. In principle, I object to this whole section, for the reasons I have stated.

The CHAIRMAN: We have heard Senator McCutcheon. Now, Senator Flynn.

Senator McCUTCHEON: I will talk to the minister tomorrow night.

Senator FLYNN: The unions are not worried at all, because there is more window dressing than bargaining.

Senator McCUTCHEON: I was not cruel enough to say that.

The CHAIRMAN: I take it that is a comment on the section generally. You are entitled to your opinion. Any other questions on this section?

Senator LEONARD: I should like to hear what Mr. Cushing has to say.

Senator McCUTCHEON: It is a question of policy. I do not think that would be fair to Mr. Cushing.

Senator FLYNN: I think you should correct your statement, and that you should have said the Government, instead of the Department of Labour. To say the Department of Labour is not fair.

Senator McCUTCHEON: I apologize; it is the Government.

The CHAIRMAN: Very well, it is a question of policy, and it is the Government.

Senator McCUTCHEON: That is right.

Senator SMITH (*Queens-Shelburne*): Is not the idea of section 14 also to give a better break to the rather large numbers of people who are not yet

receiving benefits from union organizations? You are trying to protect their position to bargain, because until now they have not been able to bargain for themselves.

The CHAIRMAN: Yes. Senator McCutcheon is assuming that every job is unionized.

Senator McCUTCHEON: The greatest number of people affected by this bill, Mr. Chairman, will be bank employees, and I have never heard them described as being brow-beaten and poor; so Mr. Cushing is right, that the greatest number of people who are going to be affected will be bank employees. If he is right, then I think my assumption that the rest will be unions, stevedores, railways, trucking lines, and so on, is a correct assumption.

Senator SMITH (*Queens-Shelburne*): My understanding is that Mr. Cushing conveyed that the banking business contains the greatest single group who would be affected by this measure.

The CHAIRMAN: No, on the question of minimum wages, not on the other element.

Senator McCUTCHEON: He said that they were the largest group.

The CHAIRMAN: But he did not say they outnumbered all the groups.

Senator McCUTCHEON: Oh, no.

Senator THORVALDSON: Then it is not fair to say that if the banking group is such a big factor in this bill, this bill will give tremendous advantages to the so-called near banks such as trust companies, and scores and hundreds and thousands of others in the financial business across this country who are in competition with banks are becoming more and more indirect competition with them? I suggest that this bill is entirely discriminatory against the banking industry.

Senator BROOKS: In speaking of the banking industry, are you including the younger bankers who are learning their business?

Senator KINLEY: They say they cannot educate them and pay them as much at the same time.

Senator McCUTCHEON: This bill will establish the wage of the elevator operator, and the good-looking girls in the Royal Bank of Canada, which pays for their plaid skirts.

The CHAIRMAN: Now we have got to Part III.

Senator McCUTCHEON: It is ten o'clock.

The CHAIRMAN: Are you prepared to call a halt, or to continue until 10.30?

Senator ISNOR: You said ten o'clock earlier in the evening, Mr. Chairman.

The CHAIRMAN: All right, then let us settle when we will continue. Some of these witnesses have been invited to be here at 9.30 tomorrow morning when the committee resumes.

Senator McCUTCHEON: We said we would discuss this on the adjournment. A number of my party will not be able to appear here tomorrow. Now, my leader is here, and he can correct me. They are quite prepared to be here tomorrow evening, but cannot appear here tomorrow morning. We were not warned of this, and we have a very important meeting.

Senator BROOKS: I could not state the position more emphatically or more correctly, so you can take Senator McCutcheon's word for it. We did not know beforehand about this or we could have made other arrangements for our meeting. It is an important meeting, and as far as we are concerned it commences at 9.30 tomorrow morning.

Senator McCUTCHEON: Yes, 9.30 tomorrow morning.

Senator CONNOLLY (*Ottawa West*): Until what time?

Senator McCUTCHEON: Until 12 o'clock.

The CHAIRMAN: I think we have to hear these witnesses who have been notified to attend.

Senator McCUTCHEON: Mr. Chairman, I used to be in the business of making representations in Ottawa, and I have sat around waiting to be heard. We can hear them at 8 o'clock tomorrow night.

The CHAIRMAN: If I tell witnesses to be here and give them a time, I try to hear them.

Senator McCUTCHEON: But you did not consult us.

The CHAIRMAN: I take it one of the functions of the chairman is to make plans, and then to point them out.

Senator BROOKS: Did the chairman make plans for this committee meeting before he knew the bill was going to have second reading today?

The CHAIRMAN: That is what a wise chairman does.

Senator BROOKS: We have a very wise chairman, and this time he has been too wise.

Senator CONNOLLY (*Ottawa West*): Perhaps you might consider whether the committee might sit, for the convenience of witnesses, when the Senate rises tomorrow afternoon.

Senator McCUTCHEON: The committee might sit when the Senate is sitting.

Senator ISNOR: No, no.

Senator BROOKS: I like the Leader of the Government's suggestion of tomorrow afternoon. I know where objections will come on that.

Senator ISNOR: You should be able to get through your business, Senator Brooks, by 11 o'clock tomorrow morning. Why not say 11 o'clock tomorrow morning?

Senator BROOKS: I am not the one who decides.

The CHAIRMAN: I think we should sit some part of the morning.

Senator BROOKS: Why not say 11 o'clock?

Senator McCUTCHEON: No, I would say 12 o'clock.

The CHAIRMAN: Then we will compromise and make it 11 o'clock.

Senator FLYNN: I suggest 11.30.

The CHAIRMAN: Shall we adjourn until 11 tomorrow morning? Is that the wish of the committee?

Senator BROOKS: I suggest 11.30; we could arrange that.

Senator McCUTCHEON: Yes, 11.30.

The CHAIRMAN: Then the order when we resume will be that we will hear the witnesses before we finish consideration of the bill.

Senator McCUTCHEON: Before we hear the minister.

The CHAIRMAN: We will get all the witnesses dealt with before we take the bill clause by clause.

Senator McCUTCHEON: All the witnesses that are available?

The CHAIRMAN: All that I have enumerated, and some who said they would not appear but now indicate they will. We will hear all of them.

Senator LEONARD: Would you let us know who the witnesses are?

The CHAIRMAN: I did in the beginning, but I will repeat the list: Dominion Marine Association, Captain P. R. Hurcomb, General Manager; Upper Lakes Shipping Company, Mr. John D. Leitch, President, Mr. R. V. Sankey, Counsel, Mr. T. Houtman, Personnel Manager; Canadian Trucking Associations, Mr. J. A. D. Magee, Executive Secretary.

Then there is Mr. W. T. Wilson, Vice-President, C.N.R., Railway Association of Canada, and Mr. D. J. MacNeill, Vice-President, C.P.R., Railway Association of Canada. They will arrive here at one or two o'clock in the morning in order to be available for a meeting tomorrow morning.

Then there is the Shipping Federation of British Columbia. The Northwest Line Elevator Association has now indicated they wish to make a presentation. This organization will be represented by Captain G. C. McKee, General Manager, and Mr. J. A. Bourne, Counsel.

Senator BROOKS: You do not consider that a complete list, or you do not know?

The CHAIRMAN: That is the list to this moment.

Senator THORVALDSON: You referred to the Northwest Line Association. Is that a shipping organization?

The CHAIRMAN: That is the elevator and grain transport, Northwest Line Association.

Senator THORVALDSON: These people were in touch with me two hours ago. They have asked me to advise them generally, and they said they will be calling me later tonight to find out when they should appear. They want to appear. They were taken offguard, perhaps through their own fault, but could you give me any advice as to when you think they should appear—this week or next week?

The CHAIRMAN: My own plan, subject to the committee, is that once we call witnesses we will keep hearing them until we are through with them.

Senator LEONARD: Will the overtime provisions of this bill apply to the Senate?

The CHAIRMAN: No, because I think you do better. We shall adjourn until 11.30 tomorrow morning.

The committee adjourned.

Ottawa, THURSDAY, March 4, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-126, respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses, met this day at 11.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

The CHAIRMAN: Senators, I call the meeting to order. It is 11.30. The first witness we are going to hear this morning is Mr. John Magee, who is the Executive Secretary of the Canadian Trucking Associations. Mr. Magee?

Mr. John Magee, Executive Secretary, Canadian Trucking Associations: Mr. Chairman and honourable members of the committee, the Canadian Trucking Associations appreciates the opportunity you have provided today of appearing before the Senate Standing Committee on Banking and Commerce to submit our views on Bill C-126, the Canada Labour (Standards) Code.

Associated with me in the presentation of this submission is Mr. Jack Donaldson of Toronto, who is one of the senior industrial relations officers of the trucking industry, on the management side. Mr. Donaldson is the Manager of the Motor Transport Industrial Relations Bureau of Ontario and will assist in answering any of the technical questions which you may have to ask regarding management-labour relations and collective bargaining processes in the trucking industry. I may say, Mr. Chairman, that Mr. Donaldson does not appear today on behalf of the Motor Transport Industrial Relations Bureau

of Ontario but has been seconded to Canadian Trucking Associations for the purpose of this submission and any testimony required of him will be on behalf of Canadian Trucking Associations.

The Canadian Trucking Associations is a national federation of provincial trucking associations. These associations are the Maritime Motor Transport Association, the Trucking Association of Quebec Inc., the Automotive Transport Association of Ontario Inc., the Manitoba Trucking Association, the Saskatchewan Trucking Association, the Alberta Motor Transport Association, and the Automotive Transport Association of B.C.

Membership of the provincial trucking associations now approaches the 7,000 mark and these members consist of the smallest trucking firms and the largest trucking firms in Canada. Between these extremes of size there is a vast number of individual firms of all sizes, providing a wide variety of freight services.

Virtually every type of trucking enterprise which requires a permit from a provincial regulatory board, either issued intra-provincially under provincial legislation, or extra-provincially under the Motor Vehicle Transport Act, Canada, 1954, is represented in the membership of the provincial associations.

"For hire" freight service on local and long distance hauls, between villages and towns and country areas, and between all the cities of Canada, is provided by these thousands of trucking enterprises which, combined, make up the Canadian trucking industry.

The total freight tonnage moved between cities by "for hire" trucking companies in 1962 (the last year for which a figure is available) was 174,642,000 tons according to the Dominion Bureau of Statistics.

What the "for hire" segment of truck transportation means in terms of total registration, as compared with the output of net ton miles, is seen in comparative figures which attest the strength and contribution of trucking within the transportation industry. According to the figures of the Dominion Bureau of Statistics, in 1962, "for hire" trucks accounted for 6.2 per cent of all truck registrations in this country—both private trucks and "for hire" trucks—but produced 65.3 per cent of the total net ton miles for all trucks, private and "for hire".

Estimated employment of the 'for hire' trucking industry is well in excess of 125,000 persons on the basis of the Dominion Bureau of Statistics figures.

I should say at the outset, Mr. Chairman, that the trucking industry is not unappreciative of amendments to the bill—specifically the amendments in section 51—which the Government saw fit to commend to the House of Commons and which were incorporated in the legislation as passed by the house.

These amendments, provide in subsection (2), for an exception, where warranted, from provisions of the Code, following a suitable inquiry. This is in addition to the eighteen-month exemption, which is possible in subsection (1).

Similarly, a further exception, following an order made under subsection (2), is authorized in subsection (5) of section 51. It eases, to some extent, the problems facing industries under federal jurisdiction and the attendant tension which has been caused within those industries.

These amendments certainly introduce greater flexibility into the legislation. They take some account of the unique problems of industries under federal jurisdiction—problems which will come to us with the passage of this Bill.

The Union with which the trucking industry has dealt over the years is mainly the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. No one would claim that they are an easy Union to bargain with.

The industry's relationship with the Teamsters in Canada extends back over a period of many years. Hundreds of man hours, involving many persons,

have been expended in hammering out the collective agreements of the industry. We must face the fact that the intrusion of the Canada Labour Standards Code into management-labour relations in the trucking industry has introduced, within recent weeks, an entirely new and disturbing element. There can be no doubt that far-reaching repercussions will be experienced by the trucking industry in new and important collective bargaining discussions which will be commencing at an early date.

Like it or not, we now know, from what has filtered through to us from labour sources, that whatever may be the attitude of the Government, or the Governor in Council, in enforcing the Labour Code, the Teamsters, the Union with which we deal has suddenly been given an obvious enticement: that of fighting for all of the objectives of the Code with no reduction in take-home pay.

We have made it clear to the Minister of Labour that we have no objection to a minimum wage of \$1.25 per hour. Because truck drivers of cross-border companies are among the better paid employees of industry generally, they already receive far in excess of that amount. What we object to strongly is the applicability of the hours-of-work provision of the Bill to our operations.

Our industry requires more than eight hours a night to complete many overnight hauls—and get the drivers home. We are subject to sudden ups and downs of traffic volumes, which, in turn, are affected by an infinite variety of conditions in manufacturing, industry and agriculture. This often puts our operations under tremendous pressure in maintaining service to the public. An eight-hour working day and a 40-hour work week is, at this time, wholly impractical and completely removed from the realities of truck operation.

The constitutional problem introduces a unique element of discrimination into the situation.

The trucking industry is split by the jurisdictional situation arising in the British North America Act and the decision of the Judicial Committee of the Privy Council in 1954 in the Winner case.

In the Winner decision in 1954, the Judicial Committee of the Privy Council decided that a federal highway transport undertaking subject to the jurisdiction of Parliament, is subject to that jurisdiction throughout the entire undertaking.

Dealing with the question of whether Parliament or the provinces had jurisdiction over a cross-border undertaking, the Privy Council declared: "The undertaking in question is in fact one and indivisible. It is true that it might have been carried on differently and might have been limited to activities within or without the province, but it is not, and their Lordships do not agree that the fact that it might be carried on otherwise than it is makes it or any part of it any the less an inter-connecting undertaking."

Thus was confirmed Parliament's jurisdiction over Canada's entire extra-provincial trucking industry.

A cross-border trucking company with, say, less than 5 per cent of its total freight volume extra-provincial, is, by the fact of its extra-provincial undertaking, subject to the jurisdiction of the Parliament of Canada and the laws passed by Parliament. All of the undertaking's employees, not just employees engaged in actual cross-border operations, are subject to federal jurisdiction. Specifically, they will be subject to the provisions of the Canada Labour Standards Code.

So we have the whole of the extra-provincial trucking industry—including the intra-provincial parts of all extra-provincial undertakings—subject to the Canada Labour Standards Code, and the whole intra-provincial trucking industry—that part which operates only within the borders of one province—subject, not to the Canada Labour Standards Code, but to a wide variety of provincial labour standards, all of them below the standards of the Code. One can opine

that the provincial labour standards, as set by legislation or regulation, are not as high as they should be. But one cannot evade the fact that intra-provincial truck lines, many of them operating over hundreds of miles of highway routes, afford the strongest possible competition over a large part of the routes of extra-provincial trucking companies.

The extra-provincial trucking industry is subject to the provisions of the Canada Labour Standards Code, introducing immediate discrimination, as soon as this legislation passes, between this important segment of the industry and the intraprovincial trucking industry. Or, even if it is the intention of the Government to exempt or to except extra-provincial trucking from all or part of the Labour Code, the intrusion into the collective bargaining process of these extra-provincial companies and the Teamsters is now a serious business fact of life for the companies.

The carrot is dangling in front of the Teamsters in regard only to those companies which are extra-provincial. They will go after the carrot.

It is our view that to legislate conditions not only in respect of hours of work, overtime conditions, vacations, but also statutory holidays in excess of those obtained through collective bargaining, hampers the normal collective bargaining procedure.

There is no doubt, having regard for the amendments to Section 51, that the Government now sees the problem of the extra-provincial trucking industry in a much different light than was the case when Bill C-126 was introduced for First Reading in the House of Commons on October 1, 1964. There are two ways in which to acknowledge that the picture is a different one than was originally seen by the Government. One is to go around the problem with escape hatches here, and escape hatches there—escape hatches, which, being conditional, do not solve the problem.

The other way is to admit that a mistake was made and proceed to correct it.

What the Government is trying to do, in our respectful submission, is to leave the extra-provincial trucking industry in the Bill but to meet the problems of the industry, which it now fully recognizes, by the provision of deferment, the 18-month deferment, which was, and remains, a part of the Bill, and by the provision of exception, which is the new part of the Bill. But this subjects the extra-provincial trucking industry to collective bargaining pressures which, only a matter of weeks ago, were subject to practical and mutually satisfactory resolution within the management-labour councils of the trucking industry.

Through the medium of Bill C-126 these now become immediate potential bargaining pressures, instigated by the federal Government, which can bring serious harm to all extra-provincial highway carriers, and from which their intra-provincial competitors are excepted by a constitutional position which places them entirely within provincial jurisdiction, and entirely outside the scope of the Canada Labour (Standards) Code.

It is, therefore, our respectful submission that the extra-provincial trucking industry should be removed from the Bill.

The CHAIRMAN: Thank you, Mr. Magee. Are there any questions which any person wishes to put to Mr. Magee?

Senator ISNOR: I suppose this will affect the trucking firms in the extreme eastern section of Canada and in the western section, to a greater extent than those located and doing business in Ontario, let us say. Am I right in that?

Mr. MAGEE: It would have a serious effect on those firms, senator, because in the west and in the Maritimes we have very long hauls conducted by extra-provincial trucking companies. They—particularly in the Atlantic provinces—labour under another problem, that is, the exclusion in the Maritime Trade Rates Act of freight shipments which do not move by truck.

Senator ISNOR: Have you any information concerning the amount of revenue derived by the various provinces in respect to the licence fees and gasoline tax?

Mr. MAGEE: I have no figures here with me, but I can assure you that it is a very prodigious one.

Senator ISNOR: That does not help us very much. A statement made yesterday by one of the members of this committee would create the impression that perhaps trucking was not so helpful to Canada in the way of revenue as some other modes of transportation. I think it would be very helpful if you could supply to the committee, and put on record, the amount of revenue derived by the various provinces with respect to both the licence fees and the gasoline tax.

Mr. MAGEE: Unfortunately—and this is one of the reasons why I have not the information with me—it is not an easy matter to do this because there are different ways of accounting for these matters in the various provincial departments. To get a consolidated national figure is difficult, but I might be able to get you some province-by-province figures for certain of the provinces.

I may say it is our submission that because we have the good fortune to operate on roads—for which we pay, in our view, a very full and fair share of the costs—there is no point in comparing us to any other industry which may have to lay down its own roadbed, because the technical requirements of its type of operation necessitate it—any more than to say that because airplanes operate in the free air they have some advantages, perhaps, over the more traditional forms of transportation. This is a fact of life, that we operate on the roads, and other modes of transport require a fixed installation on which to operate. I do not think that any discrimination should be shown to our industry because of that difference.

The CHAIRMAN: Are there any other questions?

Senator CHOQUETTE: Mr. Magee, I would like to hear something about the hours of labour of your truckers. It was said yesterday that if they drive long hours they become a menace on the roads. Could you explain what system you have, such as using two men, one taking the other's place at different intervals?

Mr. MAGEE: Mr. Donaldson is an authority on that matter. I am not myself involved in dealing with the labour situation in the trucking industry at all, and that is why I have brought Mr. Donaldson here.

Mr. Jack Donaldson, Manager, Motor Transport Industrial Relations Bureau: If you are referring, senator, to what we commonly call sleeper cab operations—this is two men in a truck driving, say, from Ontario through to Alberta—these men work in regular shifts of eight hours on, eight hours off, eight hours on, or in variable periods. Depending if one driver is tired, say, after six hours, they change at a time mutually agreeable between the two of them. But the drivers on our shorter distances, say from Montreal to Toronto, which is seven hours—are strictly on a one-man operation.

Now, if I could answer the other senator's question, in part: Would this bill affect carriers operating in our provinces more than Ontario? Most of the major companies like Smith Transport, Husband, Intercity, Direct, are Quebec and Ontario-based carriers. These are perhaps the employers of the largest number of people, and these people operate interprovincially through to Quebec, internationally through such border points as Buffalo, Niagara Falls and Detroit, so perhaps the majority of the employees in the trucking industry would be in the provinces of Ontario and Quebec that would be affected by this bill.

Senator ISNOR: I do not think that is quite a fair statement. I have in mind such firms as the Halifax Transfer Company in Halifax, Maritime, Hoyt's,

Thompson's of Nova Scotia. Their hauls extend all the way from Halifax to Vancouver.

Mr. DONALDSON: Correct.

Senator ISNOR: And the Halifax Transfer Company have a big connection in the State of Maine. Those are very much longer hauls than you would indicate from Montreal to Toronto.

Mr. DONALDSON: Yes, the route would be longer.

Senator ISNOR: That is what my colleague had in mind when he asked you about the hours of labour.

Senator CHOQUETTE: They usually work from one province to the other longer hours than 48 hours a week?

Mr. DONALDSON: Yes.

Senator CHOQUETTE: And this would affect them considerably.

Mr. DONALDSON: Yes, because traditionally the industry has grown up under provincial control, and it was not until the *Winner* case that the actual jurisdictional question was finally solved.

Senator CHOQUETTE: What would you say the average working hours of a trucker travelling longer distances like that would be a week?

Mr. DONALDSON: On the average a one-man operation would be close to 9, 10 hours a day, five days a week.

Senator CHOQUETTE: That is not regular over the whole month?

Mr. DONALDSON: It could be, senator. In some cases, depending on the particular carrier and his type of operation. If it is a mover it is a seasonal thing.

Senator ISNOR: I think the senator has in mind the two-man haul. That does not apply.

The CHAIRMAN: Do you mean the sleeper cab operation?

Senator ISNOR: Yes.

Senator McCUTCHEON: What hours would they work?

Mr. DONALDSON: They would work on an average of about 45 to 55 hours a week, depending, of course, on the length of haul and how many days the driver laid over before he came back. He may work four days this week, then be off three and work in week-end situations. It varies with each carrier and its type of operations.

The CHAIRMAN: Under the present type of operation, when does the driver begin to earn overtime?

Mr. DONALDSON: A highway driver?

The CHAIRMAN: Yes.

Mr. DONALDSON: They are paid on a mileage basis. Under our collective agreements there are no provisions for overtime for the highway people.

Senator KINLEY: Take from Nova Scotia to Boston, as I see it you have one man in those trucks. That is for quite a distance. How does that same one man cover that route right through to Boston?

Mr. DONALDSON: He would drive through probably eight or nine hours, and take a motel room to sleep anywhere from eight to 12 hours, and continue on the next day.

Senator KINLEY: Would he sleep in the cab?

Mr. DONALDSON: No, this is one thing our industry does not agree with.

Senator KINLEY: You do not object to the minimum wage, but to the restriction of time?

Mr. DONALDSON: Yes.

Senator KINLEY: And the restriction of overtime?

Mr. DONALDSON: Yes.

Senator KINLEY: I think it has been found these truck drivers drive too long a distance to be safe. What do you say about that?

Mr. DONALDSON: The figures I have available with me from the Ontario Department of Transport show that in 1963 the truck registration—and, mind you, this is large truck registration, the tractor-trailer which we find on our highways—was up 7.8 per cent. But our traffic accident ratio was much less than that. In fact, there was a decrease over the previous year, and the picture for 1964 is even better. Mind you, one accident is one accident too many.

Senator KINLEY: Those big trucks that go through from Nova Scotia to the United States are very large. They are heavy trucks, and they are under one man. How far would a man go today in that type of truck?

Mr. DONALDSON: It would depend on the type of highway. Take a four-lane highway, a driver can average 40 to 45 miles an hour, and in a 10-hour day can travel anywhere from 400 to 450 miles.

In the United States at the present time, under I.C.C. regulations—this is the Interstate Commerce Commission regulations—they control the hours a highway driver can drive, and that is 10 hours in any one day of driving time. They find even at 10 hours the performance of a professional highway driver is much better than the average public.

Senator KELLY: They drive at night a lot?

Mr. DONALDSON: Yes.

Senator KINLEY: That is the best time?

Mr. DONALDSON: Yes.

Senator McCUTCHEON: Is there a weekly limit imposed by the I.C.C.?

Mr. DONALDSON: Yes, 60 hours' driving time.

Senator KINLEY: Are there any times and roads where trucks are not allowed?

Mr. DONALDSON: Yes, some trucks carrying construction material, over-length material, bridge material, say—for instance, for the Montreal Exposition—they are not allowed on the highways during week-ends and other trucks are restricted by the Lord's Day Act.

Senator KINLEY: What about an engineer on the railway?

Mr. DONALDSON: I am not familiar with that.

Senator McCUTCHEON: We have the railroad people here.

The CHAIRMAN: Yes, we have the railroad people here.

Senator KINLEY: It is my impression that those who are driving trucks are stretching the miles they work to capacity. If there is one man and he has an accident, he is in a bad way.

The CHAIRMAN: Any other questions?

Senator CROLL: I should like to ask a question of Mr. Magee or Mr. Donaldson. In his presentation Mr. Magee gave me the impression that he was favourably impressed with the escape hatches in section 51—the 18 months, the deferment, and the possible exemption. But he made the point that it had some detrimental effect upon the bargaining processes with the union. If the industry is able to convince the Government that they fall within any one of these three categories which I have just mentioned, would not that strengthen your hand with the union rather than weaken it?

Mr. DONALDSON: It strengthens our hand slightly over our position in October last year, but it does not solve the question put by the unions right

now. According to the "Ontario Teamster," the official publication, they will be pushing this coming summer and fall for a 40-hour work week.

Senator CROLL: If you didn't have the bill at all, the conditions would not have changed.

Mr. DONALDSON: That might be, but if the hours of work had been such a concern to the union during our last negotiations, why did they not ask then to have them reduced? They have been the same during our last two contracts, and apparently they accepted the status quo up to that stage.

Senator CROLL: Do you deal with the same union for extraprovincial trucking as for interprovincial trucking?

Mr. DONALDSON: Yes, in most cases they have the same collective agreement.

Senator McCUTCHEON: What would be the result on wages assuming the same mileage rate continued once this became effective?

Mr. DONALDSON: If this bill becomes effective a mileage-paid highway driver presently receiving \$6,000 a year would be reduced by one-third, that is by \$2,000.

Senator McCUTCHEON: That is the real problem. The Government is stepping in and destroying something that has been established as a result of bargaining with as hard a bargaining union as there is.

Mr. DONALDSON: It would mean an increase of over \$1 an hour.

The CHAIRMAN: You would have to hire more drivers?

Mr. DONALDSON: Yes, and we would have a problem to find adequate help—we have that problem at the present time.

Senator McCUTCHEON: You would have the problem resulting from destroying your competitiveness in the industry with other forms of transportation. What are the holiday agreements under the present collective agreement?

Mr. DONALDSON: Under the present agreement we have eight statutory holidays. But we pay straight mileage with no such thing as overtime.

Senator McCUTCHEON: You have made representations to the Government about this and the only concession you got was the so-called escape hatch which Mr. Magee is not too sure whether it is wide enough to take care of the problems.

The CHAIRMAN: Senator Leonard.

Senator LEONARD: I would like to ask Mr. Donaldson a question. It is clear that the averaging over a period of a year will not take care of the number of hours, either regular or overtime.

Mr. DONALDSON: No.

Senator LEONARD: The men are working now more hours than 51 or 52 times the weekly maximum?

Mr. DONALDSON: If under Bill C-126 we take a basic 50-week working year at 40 hours per week, you come out with an answer around 2,000 hours. But Ontario legislation permits our Ontario competitors an intraprovincial company to operate 3,000 hours. Therefore we have a disadvantage as compared with our intraprovincial competitors.

Senator LEONARD: Does that apply in many cases?

Mr. DONALDSON: Yes, in many cases due to the conditions at the present time.

Senator HUGESSEN: Is it not likely if this bill passes the federal Parliament that provincial parliaments will adopt similar legislation in the near future?

Mr. DONALDSON: That, I couldn't say. It is something I would not like to speculate on.

The CHAIRMAN: This is speculative.

Senator BURCHILL: To put the provisions of this bill into operation and give the men the same take-home pay, providing it was practicable to put it into operation, how much would it increase your costs?

Mr. DONALDSON: It would increase the operating costs by at least 20 per cent, not only the wages but in operational costs generally. At the present time we are working in most areas of Ontario 10 hours a day, picking up and delivering freight. In a large community like Toronto we have an hour or an hour and a half's drive to get to the customer. This would now require additional equipment to be put on. Because we could not succeed in having a truck do now in eight hours what it formerly did in ten. We would have to double up somewhere.

Senator THORVALDSON: Mr. Magee said in reference to the *Winner* case that in the case of a company that has only a truck or two that engages in interprovincial traffic, then, no matter how many vehicles they have engaged in interprovincial traffic, nevertheless they are subject to the federal jurisdiction. Now, with reference to this, would either Mr. Magee or Mr. Donaldson care to explain the extent of the problem to companies that have only a few trucks in interprovincial traffic and the majority being intraprovincial?

Mr. MAGEE: Mr. Donaldson can elaborate on what I would like to say. If the operation has an extraprovincial component, no matter how small it is, if it is a regular, established part of the undertaking, the whole operation is under federal jurisdiction according to the *Winner* decision, and all employees including the bulk of those engaged only in intraprovincial operations are subject to the federal jurisdiction and subject to this legislation.

The CHAIRMAN: Maybe we should legislate away the effect of that decision.

Senator THORVALDSON: Are there many companies in that position? Or are there only a few?

Mr. MAGEE: I could not give an exact number, but I know there are a number. There was a case in the courts in Ontario recently where a company was conducting 5 per cent of its business extraprovincially on one particular run, and all the rest was intraprovincial, and they were held to be an extraprovincial company.

Senator CHOQUETTE: How do you get a licence to operate? Are you subject to P.C.V. licences? Or what provisions are you subject to?

Mr. MAGEE: Under the Motor Vehicle Transport Act of 1954 the provincial transport boards were made federal agencies, and the operator must apply for a permit to every provincial board in every province in which he wishes to operate. The board, under the federal act, is instructed to issue the permit in like manner to those under its local legislation. This, incidentally, is a serious problem in the industry because the federal act as it stands has given rise to many difficulties and many duplications of hearings which we hope will soon be eliminated by some new type of federal legislation which would preserve the provincial boards as regulatory agencies, but would join them together as one on all extraprovincial applications in which they were concerned.

Senator LEONARD: It strikes me that 3,000 hours of work is pretty excessive. Surely 2,400 hours would be a much more reasonable figure. At any rate it strikes me as being an unreasonable time for a worker to be working over a period of a year. Does it not strike you in the same way?

Mr. DONALDSON: If we were to compare, the same tension, the same job stresses, I would agree with you. We have had many instances of truck drivers working 50 or 55 hours a week leaving our industry, and wanting to work in plants where they can work an eight-hour shift. You must realize that if a man

is his own boss he is, so to speak, a "knight of the road." He has no control, and if he feels like stopping on the road and parking his truck to have a sleep, or to spend an hour and a half for lunch, or to have a cup of coffee, he can do it as long as his schedule is met.

Senator McCUTCHEON: I think Senator Leonard for many years has earned more than \$3,000.

The CHAIRMAN: Yes; and I think the same applies to you, senator—I could name some of the enterprises. May I ask you a question, Mr. Donaldson? Under section 51 which has been referred to, there is a provision for a board of inquiry, and if a case can be made that the application of the act would disturb the employment custom peculiar to this particular work, you can get a complete exemption. This means that you would have to sell your case to a board of inquiry and get a favourable report, on which the minister recommends to the Governor in Council issuing such an order. Now, do you think you have the kind of case that would fall within that provision?

Mr. DONALDSON: I think we have, Mr. Chairman; but the problem is complicated, because within a very few weeks we will be entering into negotiations for a new collective agreement.

Senator McCUTCHEON: The minister has to act on the report of the inquiry.

The CHAIRMAN: My own view at the moment is that where it says "may" that will mean "shall," if he gets a recommendation. Any other questions?

Senator KINLEY: Do your collective agreements provide for a 40-hour week?

Mr. DONALDSON: No. Our collective agreements in Ontario and Quebec do not. The Quebec ones specify 55 hours a week. In Ontario they vary from 10 and 48 to 9 and 46.

Senator KINLEY: How do you justify that by comparison?

Mr. DONALDSON: By comparison, our industry traditionally works longer hours. We must be able to arrive at a shipper at opening time, and if the shipper's employees go home at 4 o'clock they want to ship the goods manufactured during that day. We have to be available before and after the normal working day.

Senator McCUTCHEON: The men like wages, too.

Mr. DONALDSON: Yes. Our problem is not getting men to work overtime, our problem is keeping people from wanting to work too much overtime.

The CHAIRMAN: Senator Smith?

Senator SMITH (*Queens-Shelburne*): We were told that the truck drivers in general have been on a mileage basis. We were also told that they usually drive 400 miles to 450 miles a day. How do you relate that?

Mr. DONALDSON: Four hundred to 450 miles a day would be one of the longer hauls. The average would be more in the neighbourhood of 350 for an average highway haul, taking into consideration just Quebec and Ontario. At roughly $7\frac{1}{2}$ cents a mile for 400 miles amounts to over \$30. We have highway drivers right now earning in excess of \$10,000 a year, working under a United States agreement at $11\frac{1}{2}$ cents a mile.

The CHAIRMAN: If there are no further questions, we have more witnesses. Thank you, very much.

I suggest that the next witness be Captain P. R. Hurcomb, General Manager, Dominion Marine Association. I understand he is going to summarize the report you have before you.

Captain P. R. Hurcomb, General Manager, Dominion Marine Association: Mr. Chairman and honourable senators, I am here as general manager of Dominion Marine Association. The Association consists of 21 company members, representing in all about 85 per cent of Canadian-owned and operated tonnage trading in the St. Lawrence Seaway and on the Great Lakes. With me are two officials of Upper Lake Shipping Company, one of our larger companies. To my immediate right is Mr. T. Houtman, Personnel Manager, and next to him is Mr. R. V. Sankey, Counsel for Upper Lakes Shipping Company. They will help me deal with questions.

This industry is proud, and I think justifiably, of the contribution it is making to the Canadian economy.

Perhaps I may give you a few figures of the 1964 trade, which will give you an idea of the contribution. Over 190 million net tons of iron ore, coal, grain and limestone were carried during the 1964 season. This was a record for recent years. For the first time in history, grain shipments went over the 20 million ton mark, of which only 13 per cent was carried by United States vessels.

In shipments of iron ore—and here the movement is largely international by way of Canadian and United States ports—Canadian vessels carried the bulk, certainly the large majority, as compared to the United States ships.

I want to emphasize that at this point we have the lion's share of the international trade in the Seaway and on the Great Lakes. This is because our operating costs are somewhat lower. We have a competitive edge over them, and I think, gentlemen, in the interests of the economy, as well as that of the industry, we are very vigilant about retaining that edge and not permitting it to be eroded by unnecessary and perhaps fruitless interference in legislation of various types.

Our industry is deeply concerned with the implications of this bill. I hasten to emphasize that we are not here to ask you to protect our pockets. We are not here to impede social progress. We concede the good faith of the Minister of Labour and his officials, and by and large we sympathize with the philosophy or objectives behind the legislation they have drafted. However, we are deeply convinced that this bill, while no doubt desirable for certain static land based industries, simply will not fit the shipping industry.

The shipping industry traditionally, and this has been recognized by all maritime countries, requires special patterns of hours of work to fit this industry; and a simply terse bill of this sort is, we think, just not feasible. We did not have an opportunity of appearing in the House of Commons—or the other place—before a committee, but we come before you confident that with your experience you will be able to understand our problem and give a sober second thought to this bill, which we feel is very badly needed.

In this presentation I will concentrate on the inland trade; that is, the trade in the Seaway and the Great Lakes. At least one of our companies is also engaged in the ocean-going trade, but I will talk about the inland trade. Mr. Leitch, the President of Upper Lakes will say a word to you later on the ocean-going side.

As far as the inland trade is concerned we are not at all worried about the minimum wage. Since it is as a result of collective bargaining, we are well above this wage. We are not at all concerned with this. We are not worried about annual vacations or general holidays, or any other provisions of the bill except Part I which is concerned with hours of work. This is what we are concerned about. I have emphasized that our standards in other areas in respect of holidays and wages are equal to or above the standards provided in this bill.

I think at this point too I ought to emphasize that right across the board the employees in our industry are represented by strong unions or by collective bargaining agents of some kind. We have full coverage, and they are fully represented.

I think to determine what effect the hours of work will have upon us I should give you a description of the nature of our operations. Due to climatic conditions our season is limited to about eight months. Trading begins at the beginning of April and is finished by the end of November. Therefore, during this short but very active and almost hectic season, when we have to take all the trade that is available, the ships are almost continuously on the move.

From the standpoint of the employee I think he is almost in the same position as if he were foreign-going and away from home almost continuously during that time. The crews, because of the nature of the operation, cannot go home for weekends from the vessel. They are, in a sense, the captives of their employment environment. To meet these special conditions appropriate arrangements as to hours of work have been developed over the years with the very effective unions and other bargaining agents that the employer deals with, although hours of work vary depending upon the classification of the employee. One can generalize by saying that they average about 56 hours per week.

Under collective agreements we have a 40-hour standard work week, and the men are paid at the standard rates for 40 hours. For the 16 hours or more in excess of those 40 hours the men are paid overtime.

Senator GOUIN: At time-and-a-half rates?

Captain HURCOMB: Yes, at time-and-a-half rates. That is it exactly. So, the 40-hour week is really fictional in terms of reality. It is a 56-hour week, but 16 of those 56 hours are paid for at time-and-a-half rates. There is nothing unusual in this arrangement.

It is virtually the same in the United States Great Lakes fleet. It is the same in Great Britain. I think honourable senators will be interested to hear of an article that appeared in the *Journal of Commerce* just last month in which it was stated that the British National Maritime Board had agreed to an increase in the basic pay of seamen, but had also agreed to an increase in the work week from 44 to 56 hours. This is an upward revision. Of course, what they have done is instead of treating it as 44 hours at standard rates plus 12 hours at time-and-a-half, they have adopted the fairly realistic approach of accepting the 56-hour week and paying a standard rate for each of the 56 hours, and this standard rate is somewhere in between the previous standard rate and the overtime rate. In any case, they have recognized, the United States has recognized, and we have traditionally recognized the 56-hour week.

I have shown that this pattern is not at all unusual, and I want to emphasize too that it is not at all oppressive in terms of the individual. Bleeding hearts, as we used to call them in the Navy, will say: "Oh, this 56-hour week is a terrible thing. It is inhuman." But the fact is that it is the money, as one honourable senator said a short time ago, that the men want. They look forward to earning in eight months sufficient money to sustain their families for a year. Furthermore, employment having ceased after eight months they are then free to seek other employment, or if they cannot find it to receive payment from the Unemployment Insurance Fund. I think I may say without too much fear of contradiction that the members of the crew would not be overly enthusiastic with the hours of boredom that would follow from short hours of work and, of course, the loss of wages. As I have said, they have nowhere to go. The ship is in continuous movement, and there they are, doing nothing and earning considerably less than they are earning now. So, we feel this present picture is not an oppressive one from the seamen's standpoint.

The Minister of Labour in the House of Commons referred to the International Labour Organization's conference of 1962, and described it, I think, as the pattern for this legislation. We have examined the I.L.O. recommendations and conventions, and we find nothing in them which would in any sense be inconsistent with our present pattern of hours of work in the shipping industry—and this is what I emphasize; it is "in the shipping industry".

So much for our present system. I shall try now to outline the impact that this bill will have, if interpreted literally, upon employer and employee alike—by this, I mean taking a 40-hour standard week plus 8 hours of overtime. There are certain elements of flexibility in the bill that have been referred to, and which are said to ameliorate its impact. I will deal with those later and, I hope, dispose of them. But, for the moment I will assume that we have a 40 plus 8-hour week. Here is what would happen. In ships of over 12,000 tons the number of employees would have to be increased from the present number of 32 to 43—an increase of 11. For ships smaller than 12,000 tons the increase would be from 27 to 38—an increase of 11 or 12, because it could be in some cases 39. So, in these cases, be it a large ship or a small ship, the increase comes to about 30 per cent in the personnel on the ships.

Upper Lakes have made some analyses of cost which I think you will be interested in hearing. First of all, we will assume that we have the additional 30 per cent more people on board that this bill would call for, and that they will be paid at current rates. There will be two effects there. It will cost the company more and it will yield the individual less take-home pay.

Now, the cost to Upper Lakes, which has ten of the larger and six of the smaller vessels, would be, on this basis, an additional \$150,000 per year. But, more startling is the figure of the reduction in the income of the crew, because they would, of course, serve fewer hours. The estimate is that the total income of the people we now have on the 16 vessels of Upper Lakes will be decreased by about \$400, or \$36,000 annually.

Of course, it is unrealistic to assume that the employees and their representatives are going to accept this. A forecast of what will happen is contained in an extract from *Hansard* of the House of Commons of February 19, 1965. At page 11545 Mr. Knowles said:

Mr. Chairman, one of the reasons for being concerned about the sudden change from a longer working week to 40 hours was the possibility that some employees would suffer a loss in take home pay. As the minister will recall when we were at an earlier stage of this bill, some time last year I guess it was, we raised with him the question whether or not provision could be written into the bill providing for the retention of the same take home pay, even with the reduction of hours. I do not recall whether there was any commitment to bring forward such a proposition, but certainly I believe the minister was willing to study the whole question.

To this the Minister replied at page 11546:

If the hours were applied immediately, a provision of that kind, maintaining take home pay, would in certain circumstances involve increases in the rates to the amount of 20 per cent, for example. The better alternative, in our judgment—

Senator ASELTINE: Does that affect the wheat trade?

Captain HURCOMB: He did not specify what trade he was referring to. I notice that in the submission of the truckers that figure of 20 per cent was mentioned, too. He continues:

The better alternative, in our judgment, is a provision making it possible for the processes of collective bargaining to make the adjustments in this connection over a period of time.

You see the handwriting on the wall, you see what is coming, shorter hours, with the same take home pay. So, assuming that unhappy development, and we have to assume it to be realistic, our friends in Upper Lakes have again made certain calculations. This is on the basis of more employees for the same take home pay as existing employees get. The increase to this company alone would be about \$880,000 a year for their 16 ships. That money is important, and I would like honourable senators to harken back to this edge, this competitive edge which we have with the United States. We would load that to a dangerous point.

Senator COOK: That would be for wages only?

Captain HURCOMB: Wages only.

Senator COOK: What about feeding?

Captain HURCOMB: There is the feeding and accommodation element also.

The CHAIRMAN: There would be the physical problem of providing accommodation, additional accommodation.

Captain HURCOMB: I will come back to that point. The money and the services is a difficult thing, but not the only difficulty. As the chairman has intimated, about one-third more numbers would be in each ship and crew accommodation would have to be increased substantially. We have standards of crew accommodation laid down by the Department of Transport. These are good standards. We would have to maintain those standards and have to enlarge the accommodation for 30 per cent more people.

Unless some brash young man has made an estimate of the cost of changing the ships for this additional accommodation, this has been guessed at about \$100,000 a vessel. This is really largely theoretical, because for many vessels it just could not be done, it is utterly impossible to do it. For those for which it could be done, it would be immensely expensive.

The CHAIRMAN: You might need a penthouse on top of the mast?

Captain HURCOMB: Yes, indeed, and the trim of the ship would thereby be affected.

Secondly, with these increased costs, it is the estimate of Upper Lakes—and I think this applies to the other company—that they would have to discontinue operation of the smaller vessels in their fleet.

The CHAIRMAN: Which is that?

Captain HURCOMB: These would be the under 12 type, yes. This would be a real blow to the trade and to the economy, because in certain cases only those smaller vessels can have access. We are not exaggerating. This is true.

Finally, the presence of approximately 30 per cent additional personnel on board, forced to remain idle for extensive periods, will inevitably impair the efficiency of the ship. Honourable senators know this from their own experience. It will affect the productivity of the individual sailor. We hear a lot about productivity nowadays. It will be impaired. These are disadvantages.

To our knowledge, no other maritime nation limits the maximum hours of work with respect to its shipping industry. This is significant.

The CHAIRMAN: You say that leaves the benefit of limitation to be imposed by collective bargaining?

Captain HURCOMB: Yes. I think I have succeeded in demonstrating the futility of attempting to apply Part I to the shipping industry. In fact, I think it appears that the minister and his advisers now agree—in their own minds, at least—that this is just not feasible. In his statement on February 16, the minister said, as reported at page 11385:

There are other cases, ships' crews to mention an example, where working conditions make it difficult to comply with the requirements of part

I either now or in the foreseeable future. For some of these industries, the problem can be met by extending the period for adjustment provided by deferment under clause 51. For others, the extension of the time will not provide a solution. It may be necessary to arrive at standards differing from those provided in the act to meet the peculiar conditions of employment.

That is a very significant admission, I think.

Senator CROLL: I do not know that that is an admission. Is not that a statement of hope?

Captain HURCOMB: It is an admission, I think, sir, that they are beginning to see that this hours-of-work provision does not fit, at least in the shipping industry.

Senator McCUTCHEON: It was something he omitted from his first statement when the bill came into the house.

The CHAIRMAN: It is really a statement of the minister's opinion, based on a factual situation.

Captain HURCOMB: It is based on developing knowledge. We must not be critical. This bill covers 550,000 people and heaven knows how many industries. It is a tremendous task to draft legislation which will effectively apply, in a package way, to all industry. I think the minister and his advisers and staff have developed changes in their views, and we hope they will change further.

The CHAIRMAN: Are you going to comment on the escape provisions, under section 51(2)?

Captain HURCOMB: Yes. You are anticipating me, all the time, Mr. Chairman. We ask how we are to protect the industry regarding difficulties that arise, and we are told that relief lies in the bill. I will dispose of these, if I may, in the order in which they appear in the bill. The first provision that struck our eye is in clause 4, on page 3. Very little has been said about this clause. I am quoting part of it now:

—but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

When I first saw that I said, "This is great. We had collective agreements representing the wishes of the employees, which are different from those. Is it not a fair conclusion that our collective agreements are more favourable than the provisions of this bill, and therefore they will allow us quietly to escape from it."

I was quickly informed that this was not the intent of the section. I must confess I am very vague about what significance it has. Is it simply a pious declaration, a pious platitude, or does it mean something?

You will observe that it does not say who is to be the judge on whether the contract is more favourable than the bill itself. I would have thought it would have said "in the judgment of the employees or their representatives". But it does not. So I think the legal position is that to gain anything from this section you would have to go to the courts. And honourable senators will know that would be utterly hopeless.

The CHAIRMAN: Would you have to do that, or secure advice as to what your position is, and then stand on that?

Captain HURCOMB: This would be one alternative, Mr. Chairman.

The CHAIRMAN: That is the usual business provision.

Captain HURCOMB: Yes, although it might prove costly if you are wrong.

The CHAIRMAN: It is not very costly here.

Captain HURCOMB: No. This is a very sound suggestion. In any case, I will dismiss this section by saying it provides no relief or comfort to us.

The big one is clause 5, subclause 2, the averaging provision. This does not, in our opinion, apply to our industry, because the condition precedent to its operation is contained in the first two lines of 5(2):

(2) Where the nature of the work in an industrial establishment necessitates irregular distribution of an employee's hours of work—

There is nothing at all irregular about our pattern of hours of work. On the contrary, it is as regular as clockwork.

The CHAIRMAN: No. You just have an eight months' year, that is all.

Captain HURCOMB: Yes, that is it, exactly. I do not wish to bore you with definitions, but I did have a look at the Oxford dictionary this morning and I find that "irregular" is defined, in part, as "uneven in duration," not of symmetrical form. Our situation, I suggest, is not one of irregular distribution of an employee's hours of work. But more serious than that is this factor. Mr. Cushing told us last night—

The CHAIRMAN: Could I interrupt for a moment, captain?

Captain HURCOMB: Yes, sir.

The CHAIRMAN: Except if you accept this bill as providing a standard work week of 40 hours, then an industry that departs from that in relation to the 40-hour week, you then have an irregular distribution.

Captain HURCOMB: One could say it is irregular in terms of philosophy of this bill, but I do not think irregular in the terms it is intended in the section.

But here is the more serious aspect, as Mr. Cushing pointed out last night, one may average only over the period of employment. If you are employed for one year, then your hours of work may be averaged, in some cases, up to one year, but our employees are employed only for eight months on the average.

Senator McCUTCHEON: Mr. Cushing said you put the employee on your payroll for a year, and that will save the country large amounts of unemployment insurance to the general advantage of the economy.

Captain HURCOMB: I think you quoted me almost exactly. Here again is a special condition in the shipping industry. Our men are signed on for a voyage or a series of voyages. They enter into articles of agreement with the master. When the terms specified in those agreements end they cease to be employed. Under the Canada Shipping Act they are entitled by law immediately to receive all the money they have earned during that period. This special condition applicable to the shipping industry prevents us, even if we wished to do so, from spreading the pay over the entire year. I hasten to emphasize we do not want to do this. The employee does not want us to do it, because his employment having been terminated he is free to seek other work or get unemployment insurance if he is entitled to it.

Senator ISNOR: Your men employed eight months a year are in a very much preferred position to the stevedores in Halifax employed only five months.

Captain HURCOMB: Yes. I am hoping to avoid any comparisons, because these would be invidious.

Senator ISNOR: But in fairness that must be pointed out.

Captain HURCOMB: Yes, indeed, there are other industries involved.

So, I say we get no comfort from section 5 for two reasons. We are not irregular and the averaging does no good to us because of the length of employment.

The next one we come to, I think, is clause 9. This is about a permit to work more than the normal hours. It is a permit for exceptional circumstances,

and I think everyone understands what that means. There is nothing exceptional about the circumstances in our industry. This is the regular, the orthodox; this is the rule, not the exception. Furthermore, to get a permit you must show the situation is temporary, not just exceptional but temporary. I think this follows from the wording of paragraph (3), where they talk about:

...longer than the period during which...

So, our case is neither exceptional nor temporary, and we get nothing from that.

The CHAIRMAN: For you, it is the specifications of your industry?

Captain HURCOMB: Yes, exactly, Mr. Chairman.

The next is section 10, which obviously does not apply.

The CHAIRMAN: That is right.

Captain HURCOMB: This only relates to accidents, and so on.

So, finally we come to this much touted section 51 and see what this does to us.

The CHAIRMAN: Is that the dictionary meaning of "touted"?

Captain HURCOMB: I am afraid it is the wrong word, Mr. Chairman.

Senator MCCUTCHEON: I have not been talking to him, Mr. Chairman!

The CHAIRMAN: I was wondering. I was looking at you.

Captain HURCOMB: Probably "flouted" would be better.

The CHAIRMAN: You mean "much talked about"?

Captain HURCOMB: Yes, perhaps an editorial correction.

Section 51, as honourable senators know, permits the minister for a period of 18 months to defer or suspend the application of Part I, and then at the end of that period one goes to the Governor in Council for a further deferral or suspension, which would be presumably for specified periods, and there is no terminal date as far as the legislation is concerned.

Now, what does this really do? It is a postponement only of the impact of this bill. That is all it is. During the postponement period the minister may, or in the next period, the Governor in Council may lay down hours of work that will apply during the deferment period. This means that during that period—and we would hope, if the worst comes to the worst, to get full advantage of this section—during that period instead of negotiating simply with the unions—which, as honourable senators know, is always difficult—it would not be a bipartite negotiation any longer, but a tripartite. After making our peace with the unions we would have to run hat in hand, presumably, to some government official and ask him, "Do you mind, sir, if this agreement we have reached is carried on for a few more months, or as the case may be?" This is no kind of relief in our view.

The CHAIRMAN: You are speaking to the deferment aspect?

Captain HURCOMB: Yes, the deferment aspect entirely. The fact remains this hours of work provision is not just a statement of an objective or a philosophy or an ideal; it is the law. It says in this act that the hours of work will be limited to 40 plus eight; that is the law. Anything that tends to defer, suspend or anything else just does not answer our problem at all. The problem would be the same, I predict, five years from now as it is now. This is why we feel we get no comfort from that section.

The CHAIRMAN: You do on the question of suspension, don't you?

Captain HURCOMB: We postpone the evil day, Mr. Chairman.

The CHAIRMAN: Indefinitely.

Captain HURCOMB: Well, perhaps speaking a little out of turn here, Mr. Chairman, if it is a matter of indefinite postponement, aren't we large and mature enough to face the fact and exempt this industry from the bill entirely?

The CHAIRMAN: Under section 51(5), if you get your suspension, then the only way your suspension can be taken away from you is if there is another board of inquiry and you get another recommendation on that second sitting of the board of inquiry, then you may lose the suspension.

Captain HURCOMB: But one practical difficulty is there is no time limit. It does not say how long these various suspensions will last. They could be made for very short periods. We would then be in a completely chaotic state, trying to assess whether three months from now the minister or Governor in Council is going to be in a good state of health and look to our interests with some favour. It is absolute chaos, in our view, and what is accomplished by this? Who gains an advantage from this? In my view, nothing is accomplished except a great deal of paper work and unnecessary fuddling about, and certainly nobody is helped.

The CHAIRMAN: You would appear to be leading to the alternative to this, that is that there be a specific exemption from the provisions of this bill in relation to the shipping industry, with possibly a right to the employees to apply to come under the act at any time—is that the way you are going?

Captain HURCOMB: Mr. Chairman, you have anticipated exactly. That is the next paragraph.

The CHAIRMAN: I wish I could do as well with Senator McCutcheon!

Senator THORVALDSON: Captain, isn't the really big issue in your industry in regard to section 51 that your whole industry is at all times jeopardized—namely, its very existence is dependent upon a few men, a court of inquiry and then the Minister of Labour?

Captain HURCOMB: Yes.

Senator THORVALDSON: It is true it goes to cabinet, but everyone knows that if the board of inquiry is against you it is only a few men appointed by Government, and then the Minister of Labour, and the whole industry is prejudiced and in jeopardy?

Captain HURCOMB: Yes.

The CHAIRMAN: If you put it the other way, which I suspect the witness is going to discuss, under the same situation in reverse, that is, if you exclude and give the employees the right to apply, you still go through procedures, most likely, of a board of inquiry in reverse, and the minister. I would be interested in hearing the captain's comment on that.

Captain HURCOMB: What I was going to say is that one is bound to conclude that adequate relief is not to be found in this bill. All the quibbling, transitionalizing, deferring, suspending and averaging out, and all the other bits of squirming and writhing about is not going to supply the answer for us. The only answer is exemption, and if it were on terms, as the chairman suggests, that the exemption could be dispensed with on application of employees with adequate machinery set up to hear this, I feel this would be acceptable—not perfect but acceptable.

The CHAIRMAN: Gentlemen, you have finished your statement and we have got to the stage where you may be asked questions.

Captain HURCOMB: May I make one further statement?

The CHAIRMAN: Yes.

Captain HURCOMB: Something I feel keenly about, having been in the navy and getting interested in this industry, is that this is more than an industrial establishment. That is the term used in the bill. The ship is more than an industrial establishment; it is a home; it is a way of life and over the ages government has recognized this and adopted special patterns and regulations, and so on. This is the theme I want to leave with you to impress upon you the special nature of our position.

The CHAIRMAN: Don't go away for a minute; there may be questions. I notice the time is getting close to one o'clock. It is our intention to resume at two because we have some other witnesses here that we did not hear yesterday evening, and I told them we would hear them this morning. I would like to hear them today and I would like to make sure of that by getting started as soon as possible. We will therefore resume at two o'clock.

Whereupon the committee adjourned.

Upon resuming at 2 p.m.

The CHAIRMAN: Gentlemen, the sitting will resume. We had finished with Captain Hurcomb's statement this morning. The suggested course was that Mr. Leitch might, in a few moments, present the other aspect on the same shipping question in relation to ocean shipping, and then both will be open to questioning on the whole matter.

With the permission of the committee, I should like first to interject a witness, whose evidence will be short, who has to catch a plane to Vancouver. He has assured me that he will take no more than 10 minutes here.

Captain McKee and Mr. Bourne, will you come forward? These gentlemen represent the Shipping Federation of British Columbia.

Mr. J. A. Bourne, Counsel, Shipping Federation of British Columbia: I appreciate that very much, Mr. Chairman and gentlemen of the Senate. My name is J. A. Bourne. I am Counsel for the Shipping Federation of British Columbia, and Captain G. C. McKee is associated with me.

We came to Ottawa on this occasion to ascertain the status of this legislation which has recently gone through the House of Commons, and to make suggestions for appropriate regulations that we thought would cover the situation out in the shipping and longshore industry of British Columbia, as we saw it, and also to be of any assistance to the Department of Labour in that respect.

We had not expected to be afforded the privilege of being here, but last evening through the kind suggestion of the Chairman and Senator Smith (Queens-Shelburne) we were given the opportunity to come and offer what assistance we could, and we certainly appreciate being able to do so.

The Shipping Federation of British Columbia is a society which has been in existence since 1912, whose members comprise owners of deep sea vessels, ship charterers, owners and charterers agents, and several stevedoring companies and other companies that are in allied branches of the shipping industry.

Our employment arrangements are with the International Longshoremen and Warehousemen's Union and there is a collective agreement with the union that covers that situation. The stevedoring companies are the only employers of labour. The Shipping Federation is not the employer. It affords certain facilities, paying facilities, and so on, but they are not the employers. They are particularly concerned with loading and unloading of deep sea ships in various ports in British Columbia—Vancouver, the Island ports and so on.

We have no connection at the present time with the coastwise shipping industries. They have a separate association, the British Columbia Wharf Operators Association, which deals with them, and also deals with problems of the operators themselves. There are also other organizations, such as the Tugboat Owners Association, who although they have close contact with them, are not our members. So we are concerned with the loading and unloading of deep sea ships, and at the present time, as far as the west coast is concerned, we are not concerned with the problem of crews of deep sea ships. There are no Canadian owned ships with Canadian crews operating on a deep sea basis

from the west coast. They are all foreign ships. As I say, we handle the loading and unloading of ships to the dock—to what we call the ship's sling. From then on, other companies, belonging to this other association, the Wharf Operators Association, handle warehousing and cargoes beyond that point. We are confined to loading and unloading of deep sea ships.

Our problems here are primarily the hours of work aspect. We have others, such as the general holidays, vacations and some other problems that we feel are capable of being adequately solved through the provisions of regulations. We are not concerned with that. There is a cost factor there, but we are not too concerned with that particular aspect. The hours of work is the one that does give us concern.

In that connection, we are aware of the provisions of section 10(1)(c) of the bill, which provides for the maximum hours of work in a week which may be exceeded in unforeseen or unpreventable circumstances. We would not be content to rely on that provision alone. While we might not be prosecuted or convicted for a breach of the act by relying on that section, there may be circumstances arise where we might seek to exceed those hours, and the union with which we deal might have very decided other ideas on it. So we feel that we would not be content to rely on that situation and there should be other relief in the regulations that would cover our situation.

The CHAIRMAN: While on that point, quite obviously we could not speculate very well on what would be in the regulations or the extent to which they would go.

Mr. BOURNE: No. We think, Mr. Chairman, that the averaging provision section, which is section 5, could cover the general regulation, and with an inquiry under section 35, and the passing of regulations under section 51, there is machinery there that would and could protect our situation. That is the course we seek to follow.

While at one time we did seek to be exempted from the provisions of the act, I think that since it is amended we are now content to do what we can to see that regulations are passed, and feel that our problems are being solved in that way. We propose to make appropriate representations at the proper time in that respect.

As I say, Mr. Chairman, our concern is with the hours of work, not only the cost factor to our members, but it does involve the economy of Canada if ships are held up by some regulation that would prevent them being serviced in the way we have serviced them in the past.

I think that is all I can say. We greatly appreciate being here. Captain McKee is here, and he of course knows more of the practical aspects of the matter. If he or I can be of further assistance to you, we shall be pleased to give it.

The CHAIRMAN: I take it that in summary what you have said is that you feel that in the form in which the bill now is before us, if there is enough authority in it to provide regulations that would deal with the problem which you have in relation to hours of work, you are going to try to make your way in connection with what shall be in those regulations?

Mr. BOURNE: Yes, Mr. Chairman. We are speaking only for ourselves, not for the other people coastwise shipping industries, where our Canadian crews are involved, nor the Tugboat Owners Association, where there is a problem. We are speaking only for ourselves.

The CHAIRMAN: That is what I understand. I do not think there are any questions that need to be asked, are there?

Thank you very much Mr. Bourne, and thank you Captain McKee.

We finished with the statement of Captain Hurcomb, and we got to the stage of questioning. The suggestion has been made that since the other facet of the evidence offered dealt with inland traffic, the ocean traffic might be put forward by Mr. Leitch of the Upper Lakes Shipping Company, and that we could hear his presentation, which will not be long. Then questions may be asked of both gentlemen in relation to all the aspects of that shipping. Is that agreeable to the committee?

Hon. SENATORS: Agreed.

Mr. John D. Leitch, President, Upper Lakes Shipping Limited: Mr. Chairman and honourable senators, I am President of Upper Lakes Shipping Limited which is the only Canadian shipping company operating both lake and ocean-going modern bulk carriers of any consequence. Our company completely supports the submission made by the Dominion Marine Association, but I would like to take this opportunity to point out the disastrous results which would follow the application of Bill C-126 as far as the development of a Canadian ocean-going fleet is concerned.

Our company presently operates two ocean-going vessels, one being a conventional bulk carrier, the motor vessel *Wheat King*, and the other being the 25,000 dead weight ton self-unloading bulk carrier, *Cape Breton Miner*, which is currently employed in carrying Cape Breton coal to Toronto. This summer there will be a sister ship available which will make our company, I believe, the largest owner of ocean-going ships in Canada.

The submission concerning ocean shipping, which starts on page 33 of the submission of the Dominion Marine Association, contains a comparison of present wage costs of Canadian and other ocean-going ships. This table shows that Hong Kong crew costs are presently 45 per cent of Canadian ocean-going costs and that these are graded up to German costs which are approximately two-thirds of Canadian costs. If provision is made for minimum wages, and the present wage differential aboard ship remains—and I think I should point out that in fact on Canadian ocean-going ships at the present time there is a wage of somewhere between 95 cents and \$1 per hour. Actually, relatively few men on board ship are paid these amounts, and they may be boy seamen or trainees, or somebody involved in the galley department. I point out here that if this differential is maintained then it will go from 36 per cent of Canadian costs in the case of Hong Kong crews to 52 per cent in the case of German crews. Should the hours of work be limited to 40 as proposed in Bill C-126, Hong Kong crews would then receive 29 per cent of Canadian wages, and German crews 39 per cent.

As even under the present wage scales and hours of work there is a differential as against the next highest foreign ships' wage costs, namely the British, of \$40,000 to \$50,000 per year, it must be apparent that no Canadian vessel can anticipate competing in the deep sea with any foreign ship. At the present time Canada has only four or five ocean-going bulk carriers of any significance. These ships only exist because of special circumstances, and are only competitive on the ocean markets because the great bulk of their activity is purely a domestic operation. The ocean-going operation is not considered in the light of the return on investment, but whether it is better to operate a ship during the winter months or lay it up.

The committee should bear in mind that the United States completely lost its deep sea fleet, except for a portion which can only be retained by the application of unprecedented operating subsidies. The great bulk of the oil, iron ore, grain and other bulk commodities, carried in and out of the United States is carried in ships of other countries because they have allowed their wages and working conditions to reach the point which the Canadian Merchant Marine, such as it is, would reach if Bill C-126 were applied. There is no question that either

the application of the hours of work clause, or the minimum wage clause, would cause these few ships to leave Canadian Registry at the earliest opportunity, and that much employment, and the employment which one might hope for if the Canadian ocean-going fleet could develop, would be lost to this country unless great subsidies were applied.

The committee must understand that a ship is like no other operating unit. The men aboard ship regard their vessel as their home. Their cannot leave her on weekends. The ship cannot stop operating in the middle of the ocean simply to give the crew the weekend off. Customs of operating and the relationship between ship owners and seamen, which is presently operating to the satisfaction of both parties, have been built up over many years. Although there are minor variations, the operating conditions on ships are, on the whole, similar regardless of the nationality of the country. The country which decides to force special conditions on its seamen in order to increase employment will only force the transfer of ships to other countries.

The basic conditions of Bill C-126 involve minimum wages and hours of work. Our submission shows that neither of these factors may be applied to the shipping industry. We understand that there are to be certain relieving provisions, but such provisions must inevitably so distort and confuse the situation as it applies to the shipping industry that there is absolutely no other way to consider this bill than to exempt the industry from it completely.

In more general terms, Mr. Chairman, I see this bill as being one which might be forced on an industry where neither employers nor employees will welcome it. To the best of my knowledge, the industry was not consulted at any time while the bill was being drawn up, and the only outcome must be a steadily increasing amount of useless paper work and Government intervention.

I see this bill as a further intrusion on the efforts of a manager to plan his future operations. How much more difficult does it make it when one must wonder what kind of a long term contract one can make if in the following months the minister can, in his discretion, impose terms which can suddenly increase one's wage or operating costs by 15 per cent. Furthermore, what plans of financing and designing of ships can exist when a sudden whim of the minister could necessitate a substantial increase in capital costs for new crew accommodation?

Mr. Chairman, from time to time during the past two months, representatives of our company have approached the Department of Labour to attempt to discuss with them the effect of this bill on the shipping industry. The general impression has been that the Department is satisfied that this bill is politically timely, and will be pressed forward regardless of what submissions are made. I would like to feel that having now gone to the time and trouble of preparing a brief, and appearing before this committee, the submission of the Canadian Shipping Industry will get proper consideration and will not be considered a mere formality to allow disgruntled citizens to let off steam.

That is my submission, Mr. Chairman.

The CHAIRMAN: Captain Hurcomb, I think you had better come up here to sit beside Mr. Leitch. Questions can then be addressed to both of you in respect of inland shipping and the ocean-going trade. Have any members of the committee questions to ask of Mr. Leitch or Captain Hurcomb?

Senator McCUTCHEON: I would like to ask first, Mr. Chairman, what the number of employees is that will be covered by this bill if the shipping industry is covered?

The CHAIRMAN: Who is going to answer that question?

Captain HURCOMB: I am afraid I am the one who will have to say that we have not an exact answer to that, but perhaps an estimate of 5,000 might be pretty close to the mark.

Senator THORVALDSON: In that regard may I ask you, Mr. Leitch—perhaps you gave this information before I came into the room—how many employees are involved in your ocean shipping business today?

Mr. LEITCH: There are relatively few. There would probably be about 70 employees in our fleet, and in the ocean-going fleets, including one or two tankers, there might be, I think it is safe to say, 100. But, if you include the fishing fleets it can become quite vast, of course.

Senator THORVALDSON: May I ask, apropos of that, if this is a growing industry? Is the ocean-going fleet under Canadian registry growing?

The CHAIRMAN: Not very fast.

Mr. LEITCH: Well, it has been increased by hundreds of percentage points, but a few years ago there were no ships at all. In fact, there are now, I would think, four or five very modern ships—that is, ships that would be modern in any place in the world—but they are operating because of special circumstances. For instance, in the case of ships owned by Irving Oil, they are operating because they are carrying that company's own oil, and there are special tax advantages in that.

Senator THORVALDSON: My point is that this industry is starting to grow again.

Mr. LEITCH: Yes.

Senator RATTENBURY: Mr. Leitch, your ships operate on three watches, four hours on and eight hours off?

Mr. LEITCH: Yes.

Senator RATTENBURY: And your crew space is designed to accommodate that number of crew?

Mr. LEITCH: Yes, sir.

Senator RATTENBURY: Simple arithmetic would bring me to the point where there are 24 hours in the day and seven days in the week, which totals 168 hours in the week. If we divide that by three watches, then 56 hours would be the time that each man would have to work in the week?

Mr. LEITCH: That is correct.

Senator RATTENBURY: And each vessel is operating 7 days a week?

Mr. LEITCH: Yes. Each watch keeper works a 56-hour week.

Senator RATTENBURY: Am I correct in assuming that it would be impossible for you to work a 40 hour or a 48 hour week and still operate the ship?

Mr. LEITCH: Yes, sir, unless there were additional men put on, and there is no space for additional men.

Senator RATTENBURY: I am speaking of this bill now, under which you are allowed a maximum of a 48 hour week.

Mr. LEITCH: We could not work a 40 hour week.

Senator RATTENBURY: You have to work a 56 hour week?

Mr. LEITCH: We have to work a 56 hour week.

Senator RATTENBURY: I have another question. You spoke of special circumstances under which the Canadian deep water fleet is operating. I think you mentioned something about a subsidy.

Mr. LEITCH: Partially subsidy and partially contracts with Canadian corporations. For instance, we are operating one of our ships on contract with the Ontario Hydro Electric Power Commission to move coal in Canadian waters. A ship has to be a Canadian ship, an ocean-going ship, and the operations are covered by its Canadian operations in Canadian waters.

Senator RATTENBURY: She has to be operating in Canadian waters?

Mr. LEITCH: This is outside the actual coastal limits.

Senator RATTENBURY: It is outside?

Mr. LEITCH: Cape Breton.

Senator RATTENBURY: Take a ship such as the *M. J. Boylen*. Her voyage takes three to four weeks. She goes to Antwerp and she may take a few days in excess of three weeks. The same thing would apply to her, going to Antwerp or a continental port. Two or three crew members may jump ship. That is not uncommon. Then the remainder of the crew are faced with the possibility of working more than 56 hours, not less?

Mr. LEITCH: That happens quite frequently.

Senator RATTENBURY: And they would have to get the ship home, regardless of the hours worked. Am I correct that your particular ship, going in deep water, is built under subsidy?

Mr. LEITCH: Yes, sir.

Senator RATTENBURY: How long does she have to remain under Canadian flag and Canadian subsidy?

Mr. LEITCH: Five years.

Senator RATTENBURY: If this act becomes law, then, at the end of five years we might have a decrease in our ocean fleet rather than an increase?

Mr. LEITCH: I would think you definitely would have.

The CHAIRMAN: You mean a decrease in the ships on the Canadian register—not necessarily a decrease in the number of ships operating?

Senator RATTENBURY: That is so. We are interested in the Canadian register.

Senator KINLEY: The subsidy on the merchant marine, built in Canada, has not that been discontinued, or is to be?

Mr. LEITCH: Temporarily. Suspended, I think, is the word.

Senator KINLEY: Is the closing of navigation for foreign ships a help to your people?

The CHAIRMAN: It has not come in yet. The bill is still in the House of Commons.

Senator THORVALDSON: If this bill comes into operation, would you be compelled to flee to a foreign shipping registry?

Mr. LEITCH: We have only one ship at the moment. We could transfer her now. The reason we do not is that we have had certain labour problems and we feel we had better keep her there. I think we will probably keep her there. But the raw economics in fact to us is \$50,000 or \$75,000 a year to keep her on the Canadian register. But there are other reasons for keeping her there.

Senator BURCHILL: You referred to the cost of other marine ships in other countries. How do the costs stack up with Norwegian, for instance?

Mr. LEITCH: I think Norwegian and German costs are very close. We are probably 40 per cent higher than Norwegian costs.

Senator BURCHILL: A lot of our Canadian exports are being carried in Canadian bottoms?

Mr. LEITCH: Yes.

Senator THORVALDSON: As to ships of Greek registry, are their costs less than German costs?

Mr. LEITCH: I believe Greek costs are slightly less than German costs.

Senator KINLEY: Is British shipping under restrictions such as Canadian ships would be under, under this?

Mr. LEITCH: Per crew or hours of work?

Senator KINLEY: For hours of work and for minimum wage?

Mr. LEITCH: No, sir.

Senator KINLEY: The British tend to leave their shipping alone?

Mr. LEITCH: Yes, that is it.

Senator THORVALDSON: Are there ships of any country, to your knowledge, regulated in the way that you would become regulated under Bill C-126?

The CHAIRMAN: Under the way in which you might become regulated.

Senator THORVALDSON: Yes, might become regulated?

Mr. LEITCH: I think these proposals are unique as applying to ships.

Senator SMITH (*Queens-Shelburne*): How much leave does a seaman on one of the ocean-going ships accumulate in a year?

Mr. LEITCH: I think he has got something in excess of two months each year. I am not certain.

Mr. HOUTMAN: There is no definite number of days. He has at least two weeks off on pay. Because we have them in the ocean operation, we have not gone into it too deeply, but the officers are, I believe, getting a month now. They do not accumulate like they do in foreign ships, where they do take time off. They get two weeks to a month. If the ship is being fitted out, they can take that time off as well.

Senator SMITH (*Queens-Shelburne*): When one of the ships is in for refitting, are the crew all discharged, paid off the payroll, or are they still employed with the company?

Mr. HOUTMAN: The way we work is that if you want to take the time off, for reasons stated, you can take leave.

Senator SMITH (*Queens-Shelburne*): That is not the point I was trying to get at. It is, if this bill comes into operation, whether it will mean you can take into account the averaging clause which is permissible.

Mr. LEITCH: No, sir, I am almost certain it would not. The fact is that on the Lakes the people work eight months and then leave the ship and go somewhere else.

Senator SMITH (*Queens-Shelburne*): I assume he continues in the operation of that ship.

Mr. LEITCH: I believe that in deep sea the same thing would apply. A man is not tied to that ship. He can stay on articles for a period of time. If he stayed on for six months, he can leave the ship and go somewhere else. It is so different from shore establishment.

Senator SMITH (*Queens-Shelburne*): If you took your case before the board of inquiry, as provided in the bill, and if a recommendation were made that would in fact give you relief from the provisions which you now say contain hardship, would you be so worried about that?

Mr. LEITCH: Yes, sir. We should really be completely exempted. It is difficult for businessmen to have to appear before boards. It simply does not fit in under these regulations.

The CHAIRMAN: That seems to be an occupational hazard.

Mr. LEITCH: Yes, sir.

Senator McCUTCHEON: What is the bargaining unit with whom you deal in respect to your ocean-going vessels? Is it the same as with the others?

Mr. LEITCH: Yes, the Canadian Maritime Union.

Senator McCUTCHEON: That is a reasonably strong union?

Mr. LEITCH: Yes, sir.

Senator BOUFFARD: How does the United States deal with this, their rate must be higher?

Mr. LEITCH: Yes, sir, their coasting trade is completely restricted and they have no ocean-going fleet other than one which is subsidized, 50 per cent of their operating cost and the other 50 per cent of construction cost.

Senator BOUFFARD: If we adopt the same procedure, the tax payers must pay it?

Mr. LEITCH: Certainly there will be added cost, if the fleet is to be retained.

Senator THORVALDSON: Let us suppose that this bill goes through in its present form and your fleet becomes subject to the bill, and then suppose that you are invited to make your representations to a board for the purpose of obtaining exemption from this bill. Would you consider yourself in a secure position to expand your fleet and invest a large amount of money in expansion, if you were subject to such a board and to the minister's discretion that would in that case be involved, or would you consider yourself more secure in a financial way, if you knew that you were subject to the terms of an Act of Parliament only?

Mr. LEITCH: I do not know just how to answer that, other than that this puts another uncertainty into the business.

Senator THORVALDSON: That is my reason for asking this question.

Mr. LEITCH: I think we would feel uncomfortable as to what the short-term decision of the minister may be.

The CHAIRMAN: As there are no other questions, thank you Mr. Leitch, thank you captain.

The CHAIRMAN: We have representatives here of the Railway Association of Canada, Mr. W. T. Wilson, Vice-President, C.N.R. Railway Association of Canada; and Mr. D. J. McNeill, C.P.R., Railway Association of Canada.

Mr. W. T. Wilson, Vice-President, C.N.R. Railway Association of Canada: Honourable senators: I have with me Mr. D. J. McNeill, Vice-President of the C.P.R., and Mr. G. A. Richardson, who is the General Secretary of the Railway Association. Mr. Richardson will present the brief.

Mr. G. A. Richardson, General Secretary, Railway Association of Canada: Mr. Chairman, Honourable senators, members of this committee: The Railway Association of Canada appreciates the opportunity of appearing before you to present its views in the form of a submission on Bill C-126, and because of the short notice apologizes for having to read into the record this summary which I have before me.

Before doing so I would like to state that the Railway Association of Canada is a Canadian association of railways comprising the following companies:

- Algoma Central and Hudson Bay Railway
- Canadian National Railways
- Canadian Pacific Railway
- Chesapeake & Ohio Railway
- Great Northern Railway
- Midland Railway Company of Manitoba
- Northern Alberta Railways
- The Ontario Northland Railway
- New York Central Railroad Co.
- Pacific Great Eastern Railway
- Quebec North Shore and Labrador Railway
- Toronto, Hamilton and Buffalo Railway
- Wabash Railway Company
- White Pass and Yukon Route

When Bill C-126, Canada Labour (Standards) Code, was introduced in the House of Commons the broad intent of the Bill was stated to be:

- to establish "minimum labour conditions";
- to ensure that all employees within federal jurisdiction would have, as a matter of right, "as high a standard in these basic labour conditions as is within present reach"; and
- "to help spread employment among the work force".

Its provisions will apply to some 556,000 employees within federal jurisdiction of whom approximately 25 percent are employed in the railway industry.

There can be no quarrel with provisions which may be necessary to protect the health, efficiency or general well-being of employees. Some of the provisions in Bill C-126, however, go far beyond this intent and if applied to certain groups, would, because of the nature and conditions of their work be wholly inappropriate. Some provisions would also increase the level of benefits established through the process of collective bargaining for employees already occupying a leading position among Canadian wage earners. For these reasons, passage of the Bill would create serious inequities among employees, would place an excessive cost burden on railway operations and have other distorting effects which could not have been intended.

The railways are a long established industry some of whose employees were organized before the turn of the century and 85 percent of whom are represented by mature, powerful unions with a long and successful experience in collective bargaining. It would have been expected, therefore, that a labour code which was intended to establish "minimum labour conditions" would have only slight impact, if any, on such an industry. This is not the case.

One reason is that the Bill seeks to apply uniformly to all types of employment situations a set of standards which have been basically devised to apply to only one, albeit a more common, type of employment situation.

The eight-hour day and forty-hour week with penalty overtime as well as the eight general holidays with pay are at least capable of accommodation in manufacturing establishments where regular hours can be scheduled during a normal five-day week, where periodic cessations of work at nights, week-ends and general holidays are not in conflict with the nature of operations, or where regular eight-hour shifts can be established and the work is done at a constant pace in a fixed plant and under direct management supervision.

These characteristics do not exist in many railway operations and, despite the efforts made in the Bill to facilitate application of the provisions in certain unusual employment situations, the Bill in its present form would impose heavy burdens on the railways and on their employees engaged in operations the nature of which require provision of round-the-clock, year-round services to the public with peak periods at nights, week-ends and general holidays.

For example, it may be practicable to establish penalty overtime for hours worked in excess of eight per day and forty per week in those employment situations where there is a stable work force normally working an eight-hour day and a five-day week and where overtime is occasional; but in a number of railway operations it is not reasonable to do so.

A majority of railway employees work forty hours per week or less and enjoy seven general holidays. Certain groups, however, do not because the nature and requirements of their work make such conditions inappropriate.

These same employees have in the process of collective bargaining sought and agreed upon wages and working conditions which take these differences in requirements fully into consideration and which, at the same time, have put them in the forefront of all workers in Canada. They have been able to maintain this position notwithstanding the minimal growth in railway business during the last decade. There can be no question of the effectiveness and bar-

gaining power of the unions which represent these employees, but throughout the North American continent they have chosen to negotiate benefits more desirable to them and compatible with and appropriate to the nature and requirements of their work than limitation of hours.

Imposition of the provisions of the Bill would also cut deeply into the area and scope of collective bargaining. Some employee groups which have already obtained through collective bargaining earnings among the highest in Canada would, by legislation, be put in a still more favourable position. This is bad in principle, because if a union obtains such benefits through legislation, it is encouraged to seek further gains through this medium. This bypasses true collective bargaining and deprives the employer of the right to bargain for adjustments desirable in his operations as an offset to the union demands.

Collective bargaining has long been acknowledged to be the best method of arriving at a level of wages and working conditions in industries where employees are sufficiently organized to be able to protect their own interests. The whole of federal industrial relations law has been designed to encourage private collective bargaining and to provide safeguards for the interested parties and the general public.

True collective bargaining recognizes the economic realities which face a company and its industry. It also recognizes special working conditions or situations and the prevalence of practices elsewhere, all of which is to the long run benefit of both the railways and their employees.

Disregard for these factors can produce completely impractical situations between employees and their employers. For instance, certain provisions of Bill C-126, when unilaterally imposed through legislation on certain employee groups, produce the paradoxical result of reducing employee earnings and increasing the railways' costs at one and the same time.

For the past ten or fifteen years the Canadian employer has been under the pressure and necessity of avoiding unnecessary labour costs. Any restriction on the use of labour increases its costs just as much as a direct increase in wages. Clearly as the cost of labour continues to increase there will be more and more displacement of labour. The proposed legislation going beyond what is already provided in collective agreements, will inevitably discourage the employment of labour.

APPLICATION TO RAILWAY OPERATIONS

Part I—Hours of Work

The eight-hour day and 40-hour week is currently enjoyed by the vast majority of non-operating employees and by operating employees in yard service. Employee groups not on a 40-hour week comprise running trades employees in road service, sleeping and dining car employees, extra gang labourers, signal maintainers employed mainly at isolated line points and employees in marine services. In each instance the reason why these conditions do not apply lies in the unique nature of the operations in which the group is involved or the particular circumstances under which the work must be performed.

Road Service Employees—Running Trades: These are the employees who actually operate the trains. They are not paid according to an eight-hour day, forty-hour week but according to a combination of factors which have developed through collective bargaining over the years and which reflect the unique conditions under which these employees work.

A "day" as understood in other forms of employment has no relation to a day's work for road service employees in the railway industry. These employees work and are paid under what is known as the dual basis of pay, which provides for payment on the basis of miles or hours, whichever is the greater. For example, the basic rate of pay in freight service is specified for a day of eight hours or 100 miles. The hourly rate is one-eighth of the basic

daily rate; the mileage rate is one-hundredth of the daily rate. This mileage rate is paid for all miles run in excess of 100 in addition to the basic rate. However, in any tour of duty where the miles run are less than 100, a minimum of 100 is paid.

The purpose for which the dual basis of pay was devised was twofold:

- (a) to provide payment on a mileage basis as an incentive to encourage employees to get over the road as quickly as possible, and
- (b) to protect employees against their time on duty being excessive in relation to the miles run.

Since 1918 the standard speed for the determination of overtime has been $12\frac{1}{2}$ miles per hour—that is in the relation between the basic mileage of 100 for a day and the basic eight hours for a day. Protection to the employee against his time on duty being excessive in relation to the miles run is afforded by the provision that he will be paid on the basis of miles or hours whichever is the more favourable to him. If an employee completes a run in less time than it would take at the standard speed of $12\frac{1}{2}$ miles per hour, as is usually the case, he is paid on the greater than the time it would take at the standard speed of $12\frac{1}{2}$ miles per hour, overtime is paid for the excess hours.

The foregoing can be demonstrated by reference to a run of 125 miles. The time allowed to complete such a run at “standard” speed would be 125 divided by $12\frac{1}{2}$ or 10 hours. If an employee completed such a run in six hours, or four hours less than that required at “standard” speed, he would be paid on the basis of miles that is 125. In other words, he would be paid for 125 miles rather than for six hours which at the “standard” speed would only be 75 miles. However, if an employee completed the run in twelve hours, two hours more than that required at “standard” speed, he would be paid on the basis of actual hours worked, two of which would be at the overtime rate.

Overtime rates on both major railways differ as between Eastern and Western Canada.

In Eastern Canada overtime is paid at penalty rates of time and one-half.

In Western Canada overtime is paid at pro rata rates. This is because special or arbitrary payments are made in respect of switching at junction points and time at turn-around points when trains are turned between terminals. These payments are in lieu of a penalty rate being applied to overtime and have been regarded by the employees concerned as being more favourable to them.

Payments to road service employees paid on the mileage basis are not confined to miles actually run. Additional payments are made on the basis of $12\frac{1}{2}$ miles per hour for time delayed at terminals before commencement of the road trip; for time held on duty yarding trains and delivering engines to shops or crew changeoff points on completion of the road trip; for time delayed enroute performing work train service; and in Western Canada, as mentioned, for time switching at junction points and time at turn-around points.

The manner in which these special payments increase payment for miles actually run can be demonstrated by again referring to a run of 125 miles. If a crew were delayed at the initial terminal for one hour before commencing the road trip, consumed five hours in running the 125 miles, were held on duty thirty minutes after completing the road trip, and were delayed one hour enroute performing work train service, payment would be paid as follows:

Delayed at the initial terminal	— 1 hour = $12\frac{1}{2}$ miles
Work train service enroute	— 1 hour = $12\frac{1}{2}$ miles
Road miles run	— 5 hours = 125 miles
Delayed at the final terminal	— 30 mins. = $6\frac{1}{2}$ miles

Total miles paid

156 miles

In this example although the crew was on duty over $7\frac{1}{2}$ hours it would receive slightly more than $1\frac{1}{2}$ times a basic day's pay.

This is a representative example of the application of the dual basis of pay and it also illustrates that hours paid for are frequently 50% to 70% greater than actual hours worked.

By reason of the fact that the great majority of earnings of road service employees accrue from payment on the mileage basis of pay rather than the hourly basis under the dual basis of payment, the extent to which these employees are permitted to work is regulated not by hours, or by days, but by miles.

Provisions in Collective Agreements arrived at through the normal collective bargaining process, limit the number of miles which these employees are permitted to work each month, and monthly guarantee payments are expressed in terms of miles, and not by hours or days.

The dual basis of pay allows employees working on higher speed runs to make their allowed earnings in a shorter space of time than those on slower speed runs. The latter group, therefore, may have to work a greater number of hours in a month in order to equalize their total monthly earnings.

According to the latest figures available from the Dominion Bureau of Statistics, the dual basis of pay has resulted in average annual earnings for the year 1963 for all road service employees on Canadian railways of \$6,904.

The advantages of the dual basis of pay to road service employees can best be demonstrated by reference to their actual earnings. For example, in 1963 the earnings of full-time running trades employees of Canadian Pacific who performed some work in each month of 1963, were:

	Engineers	Conductors	Trainmen	Firemen	Total
\$10,001 to \$11,000	8	1			9
9,001 to 10,000	169	4			173
8,001 to 9,000	464	52	5	8	529
7,001 to 8,000	238	427	107	239	1,011
6,001 to 7,000	42	272	875	476	1,665
5,001 to 6,000	8	41	504	107	660
4,001 to 5,000	1	5	76	7	89
3,001 to 4,000		1	6		7

These earnings do not include wage increases ranging from $3\frac{1}{2}$ to $6\frac{1}{2}$ % agreed to in settlements reached with these employees in 1964. The fact that 80% of these employees earned over \$6,000 in 1963 and that only 2% earned less than \$5,000 is clearly indicative of the extent to which they already enjoy monetary advantages greatly in excess of the standards contemplated in Bill C-126.

It is significant to note that road service employees have never asked or even suggested that they should be placed on an eight-hour day, 40-hour week. They have realized that these conditions are incompatible with their present advantageous basis of pay. That an eight-hour day, 40-hour week should now be implemented through legislation, without due regard to all factors concerned, will be unique in North America, and cannot do other than create grave anomalies for which there is no logical justification.

There are other conditions which, so long as the mileage method of payment remains in effect, emphasize even further the inappropriateness of applying the "Hours of Work" provisions of Bill C-126 to road service employees.

Collective agreements covering these employees provide the following monthly mileage guarantees and minimum and maximum monthly miles allowable:

	Monthly Guarantees	Maximum Monthly Miles Allowed
Trainmen—Freight	2800	3800 (Western Canada) 4300 (Eastern Canada)
—Road Switcher	2600	3800 (Western Canada) 4300 (Eastern Canada)
—Passenger	4500	5700 (Western Canada) 6000 (Eastern Canada)
	Minimum Monthly Miles	Maximum Monthly Miles
Enginemen & Firemen—Freight	3200	3800
—Passenger	4000	4800

While the majority of road service employees exceed their minimums on the mileage basis of payment in less than 40 hours per week, many, due to the nature of the service in which they have chosen to work, work in excess of these hours in order to make the miles to which they are entitled under their Collective Agreements. If the latter were to be restricted to eight hours per day and forty hours per week, they could not continue to maintain present earnings. In many cases these are senior men holding these runs through exercise of seniority.

During the period of the recent heavy grain movement for export to Russia the maximum monthly mileage permitted train service employees under their Collective Agreement had to be lifted at several locations to prevent interruption in the movement of grain for export. It may be true that the movement of this grain might have been considered an exceptional circumstance which would have justified the issuance of a permit to authorize hours worked by employees in excess of the maximum hours of work permitted under the Bill. However, the railways would have been subjected to heavy additional costs over and above existing premium rates of pay, through payment of penalty rates in respect of the excess hours so authorized in order to ensure the continuous flow of grain.

Senator ASELTINE: To what extent would that excess have been a heavy additional amount?

Mr. MCNEILL: About 20 per cent.

Mr. RICHARDSON: Had additional men been available to be hired to perform this excess service—which they were not—the effect of the restriction of hours for regular employees would have been to create only temporary employment for other persons who would then have been laid off.

Senator THORVALDSON: Could you have got the name, anyway?

Mr. RICHARDSON: That is the point, we probably could not, and I think we refer to this subsequently.

Mr. MCNEILL: We so say—we could not.

Mr. RICHARDSON: Railways, by the nature of the demands made for their services, have to cope with a considerable fluctuation in traffic levels. Sometimes, as in the case of the Russian wheat movement, these fluctuations may be of considerable size and duration. Traditionally they have been taken care of in part by variation in the quantity of work performed by regular employees who will operate up to the maximum mileage limitation, or, if necessary, in

excess of these limitations. With a decrease in volume of work as the particular traffic movement finishes, mileage falls back to a normal level. A rigid restriction of hours such as proposed would force the employment of men for temporary periods only, creating instability of employment that is contrary to the public interest.

It is also the experience of the railways that in times of peak traffic volume, employees of a type suitable for running trades service are not available for only temporary employment. It is not in the interests of public safety that rigid limitations of hours should force the railways to consider the employment of unsuitable persons in these positions.

A significant number of these running trades employees are assigned in service governed by the specific needs of patrons of the railway industry.

Some are assigned to road switcher and wayfreight trains whose prime function is to service industry. Such service must of necessity be geared to the requirements of the railways' customers, all of whose requirements cannot always be met in the same eight-hour period worked by each of the separate industries. The result is, of course, that road switchers and wayfreights must frequently spend more than eight hours fulfilling the needs of the respective shippers and consignees.

A similar situation exists in respect of suburban commuter service. The function of this service is to bring people residing in suburban communities to work in the morning and return them to their homes at night.

The CHAIRMAN: It is three o'clock, and just about the Senate's time for sitting. Is this a good place in your presentation to break off?

Mr. RICHARDSON: It is quite a logical place.

The CHAIRMAN: We shall reconvene when the Senate rises, which we anticipate will be about 4.30 p.m.

The committee adjourned.

—Upon resuming at 5 p.m.

The CHAIRMAN: Order, please. Mr. Richardson is going to continue the presentation of his brief.

Mr. RICHARDSON: Turning now to suburban commuter service, a similar situation exists in respect of suburban commuter service. The function of this service is to bring people residing in suburban communities to work in the morning and return them to their homes at night. While the actual working time in this service does not usually exceed four hours per day, the total hours on duty of the crews, for which they are paid, must be longer than the average commuters time away from home and, therefore, averages ten to twelve hours per day. If these and other requirements of the railways' patrons are to be met, train crews cannot always perform the services required within the standard hours of work prescribed by the Bill. In these circumstances the imposition of an absolute unqualified penalty for failing to do a thing which cannot reasonably be done is completely lacking of justification.

An attempt by the railways to lessen the impact of these penalties on their operations would involve, in some cases, forcing employees to change their residence to less suitable locations, and in others, an increase in the time employees would have to spend away from home. It would also seriously affect the efficiency of Canadian railway operations which is so necessary for the good of the whole economy.

The railways, therefore, strongly oppose any statutory application of the conditions contemplated in Part I—Hours of Work—to the road service groups whose entire pay structure has traditionally recognized the unique working conditions associated with the operation of road freight and passenger trains,

and whose method of payment already provides premium benefits that are not only in lieu of but greatly exceed the benefits of the eight-hour day, 40-hour week, as those conditions affect the normal run of employees. To compound through legislation the advantage already enjoyed by these groups is inequitable and unjust not only to the railways but to all other employees both inside and outside the railway industry who will not enjoy these compounded benefits, and this could surely not have been the intent of the Bill.

Sleeping and Dining Car Employees: The working conditions of employees in Sleeping and Dining Car Service require hours on duty in excess of eight per day and 40 per week. Their monthly rates of pay are based on 208 hours per month (48 hours per week).

The hours of duty of Sleeping and Dining Car staffs cannot reasonably be limited to eight hours per day while enroute on passenger trains since the services required by the travelling public necessitate these employees being "on duty" as much as sixteen hours in dining car service and as much as 20 hours in sleeping car service in a particular calendar day. Assignments are, however, established for these crews on a basis that results, as nearly as possible, in 208 hours per month (48 hours per week) on which hours their monthly salary is based. Under this arrangement the long hours on duty while enroute are offset by longer lay-over periods between trips.

If the railways were required to pay penalty rates after eight hours on duty per day, the increased payroll cost would be prohibitive and would make Sleeping and Dining Car Services so much more expensive as to force the railways to curtail drastically such services or eliminate them completely.

An attempt to lessen the impact of penalty time by shorter hours would involve unsatisfactory service to the public, and actually increase layover time away from home for the employees, thus decreasing their useful leisure hours at their homes.

Extra Gang Labourers: These employees are not paid according to a 40-hour week because their work must be performed during approximately six months of the year, as the weather permits. Existing agreements with these employees provide for a nine-hour day, six-day week at straight-time rates of pay. A restriction in hours to a maximum of 48 would reduce weekly earnings by nearly four percent even when time and one-half rates are paid after 40 hours. The cost to the railways per hour worked would be increased by more than eight percent since nine employees would be required to perform the work that eight did before and each would be paid time and one-half for hours worked over forty.

A restriction in the number of hours that could be worked by extra gang employees, as is proposed in the Bill, would impose an unfair and unnecessary hardship upon them. It would be tantamount to an enforced lay-off and the extra leisure time resulting therefrom would not be to their advantage. For the most part they live in boarding cars away from home and usually at small isolated points. During off duty hours there is little, if anything, for them to do. Even though not working their living expenses would continue. Most important, however, it would be an injustice if these employees who work long hours in order to build up their earnings during the active months of the year were to be prevented from doing so particularly when, by choice or necessity, many of them remain idle during the winter months.

Signal Maintainers: Certain other groups of railway employees are not paid according to a forty-hour week because the nature of their work requires them to be on call for longer periods, although not necessarily at work during those periods.

This is true, for example, of some groups of employees in maintenance of way road machinery repair shops, of mechanics engaged in road repair work as well as of signal maintainers and signal maintainers' helpers. The basic

forty-hour week was established for the latter employees on June 1st, 1951, with attendant upward conversion of 20% in hourly rates to represent the same take-home pay as had formerly existed when these employees worked a basic forty-eight hour week. However, due to the character of the work of these employees, being required as they are to effect emergency signal repairs that may be necessary without regard to the hour, the day or the night, a basis of payment consistent with the requirements of the job was negotiated and forms part of the existing collective agreement. These employees have two days off per week and on one of these days they are required to be available for call. They may also be called out after their regular working hours on any of their regular work days.

The hourly rates for these positions reflect the forty-hour week conditions but they are paid for $205\frac{1}{2}$ hours each month. The basic monthly hours of a 40-hour week are $169\frac{1}{3}$, and the extra hours paid these employees each month are to compensate them for any emergency calls required outside of their regular hours of duty.

In actual practice, these employees might not be called out on a single occasion in the month but they are still paid for $205\frac{1}{2}$ hours (48 hours per week) even though only 40 hours per week were actually worked.

It will be readily apparent, in the light of the foregoing, that the imposition of penalty overtime rates in respect of hours that might be worked in excess of 40 per week would compel the railways to reduce the present guaranteed payment of $205\frac{1}{2}$ hours to $169\frac{1}{3}$ hours, a reduction of approximately 20%.

MARINE SERVICE EMPLOYEES: In marine services the principle of the 40-hour week is recognized. However, the nature of these services requires that the principle be adapted to the type of operation, the type of ship and length of voyage.

Collective agreements with water transport employees reflect the specialized working conditions while fully recognizing the basic principle of the 8-hour day. In these services, crews may be at sea for several days and, while on board, work on watch systems of four hours on and eight hours off, or six hours on and six hours off. Other conditions of service sometimes dictate work days of up to 12 hours as well as spreads of up to 14 hours in which to perform a day's work. These working schedules have evolved through collective bargaining.

While at sea rest days are accumulated and annual leave is earned. Additional leave with pay may also be earned in lieu of overtime when employees work in excess of eight hours per day. These days of accumulated paid time off may be taken at the end of each tour of duty, but generally are taken at the end of the navigation season. Crew members are thus able to remain on the payroll after the close of navigation.

The advantages to the employees in these practices lie in extending the period of the year in which they remain on the payrolls of their employers and so shortening the period of winter unemployment, as well as to extend the length of contribution periods to pension funds and thus build larger pensions for retirement. Also, more leisure time ashore is made available to the men.

Advantages for employers are that they are better able to retain skilled workers in seafaring occupations from year to year.

Application of the Bill's provisions in such circumstances are not only impracticable but would be unnecessarily costly to the employer, for larger crews would be required and this, in turn, would necessitate increased space for their accommodation as well as increased costs of subsistence, all at the expense of revenue earning capacity.

Part II—Minimum Wages: This part of the Bill provides for a minimum hourly wage of \$1.25.

Minimum rates authorized by provincial governments range from fifty cents per hour for men in Newfoundland and sixty-five cents per hour in New Brunswick to \$1.00 per hour in the industrial centres of Ontario.

An inevitable consequence of imposing a minimum hourly wage which exceeds levels authorized by provincial governments will be that existing patterns of wage differentials which have been achieved through private collective bargaining in both federal and provincial jurisdictions will be disrupted. This will lead to fresh demands for higher wages and fringe benefits from strongly placed labour unions. Others will follow suit, and the outcome will be increases in wages and other labour costs which are unrelated to work done, productivity or profitability.

Extra gang labourers and probationary sectionmen whose rates would be affected by this provision are casual workers who may or may not become regular employees and are invariably hired on a temporary basis at rates prevailing in the community where hired.

In telecommunications there are certain marginal services provided to the general public which the railways would not be justified in maintaining if forced to pay minimum wages of \$1.25.

The major railways employ 427 messengers who are 17 years of age or more and approximately the same number under age 17. If forced to pay telegraph messengers 17 years of age or more a minimum wage of \$1.25 per hour, the messengers' payroll cost to the railways would increase by 45%.

Today, a messenger can deliver an average of seven messages per hour but a telephone operator is capable of completing an average of 16 per hour. It is logical to assume that under these circumstances an increase of 45% in the wage cost of providing this service will force the railways immediately to initiate more economical means of handling telegraph traffic, dispensing with the services of messengers.

Also affected would be the rates of office boys which, as in business generally, are based on age, education and degree of experience and which are established at a level providing a suitable differential with the clerical positions to which they are normally promoted.

Part IV—General Holidays: The existing practice which again has evolved through the collective bargaining process provides seven general holidays with pay to all employees excepting extra gang labourers and the road service employees of the running trades. Monthly-rated employees in all classifications have traditionally received time off on general holidays without pay reduction while hourly and daily-rated employees covered by collective agreements secured five general holidays with pay in 1955, an additional holiday in 1956 and the seventh in 1957. Since 1957, agreements reached with yard service employees of the running trades group, who are paid on the daily basis, have provided seven holidays with pay.

General holidays are not included in the working conditions of road service employees to which group reference was made earlier. Nor are general holiday provisions in effect for any road service running trades employees on the North American Continent who enjoy the advantages of the dual basis of pay. It is worth repeating that the working conditions of such employees already recognize the requirements of their service in accordance with the necessity of the railways discharging their obligations as common carriers seven days a week and 365 days per year.

When the majority of employees can be released for the holiday the fundamental principle of penalty payment is effective; where the majority of employees cannot be released for the holiday, as in the case of road service employees, the principle of the penalty payment is defeated. To apply a penalty

where it cannot be effective in eliminating or controlling work performed would be contrary to the generally accepted principle governing penalty payments.

The railways have never quarrelled with the position that the basic system of pay applicable to road service employees as well as their level of pay should, as it does, reflect the unusual requirements of the service, including work performed on general holidays without extra remuneration. Under the dual method of pay the increased average speeds have resulted in these employees earning their pay in fewer and fewer hours. To add to these advantages, as would be done if Bill C-126 were enacted in its present form, is without justification.

On sixteen different occasions since 1950, the three major Brotherhoods representing running trades employees have submitted demands pertaining to general holidays with pay on both major railways. In ten cases such demands were withdrawn by the Brotherhoods in the collective bargaining process; in the remaining six cases, Conciliation Boards were appointed to consider these demands and after thorough investigation, rejected them.

In respect of classes of employees for whom general holidays are practical, Section 33 of the Bill goes far beyond prevailing practice in requiring that an employee need only receive wages in respect of one day in the week in which the holiday occurs in order to qualify for the holiday pay. Such a provision will undoubtedly encourage absenteeism among employees on the holiday as well as on the days preceding and following the holiday.

Mr. WILSON: If I can interrupt there, Mr. Chairman, I would point out that there is, of course, an amendment to that section which is not reflected in this brief.

The CHAIRMAN: Yes, I was just looking at it.

Mr. RICHARDSON: Under most collective agreements an employee must render service on the work day of his work week immediately preceding and immediately following the holiday and be available for duty on the holiday if he is scheduled to work on that day in order to qualify for the holiday pay. In the most recent proceedings before a Board of Conciliation involving the non-operating employees of the railways, the Board considered and rejected the unions' request that an employee qualify for the holiday pay by working only either the day before or the day after the holiday, maintaining the present practice that he must work both the day before and the day after.

In April 1964, a special survey covering 100 large manufacturing establishments in Canada was conducted at the request of the railways by the Economics and Research Branch of the Department of Labour in respect of qualification requirements pertaining to paid general holidays for non-office employees in outside industry. It shows that more than 90% of the employees involved in the survey were required, in order to qualify for payment for the general holiday, to work on the work day preceding and/or the work day following the holiday.

It is a matter of serious concern to the railways that such prevailing qualification requirements recognized as necessary in most collective agreements and ratified by Conciliation Boards have been completely overlooked in the Bill.

In addition provision through legislation of eight general holidays to certain groups and an eighth general holiday to all other railway employees is another example of encroachment by government on an area of working conditions which, in Canada, traditionally has been the subject of private collective bargaining. If legislative action is to be the means through which these benefits are to be provided rather than through the normal process of collective bargaining then reliance by unions on the bargaining process will

be diminished. This will encourage parties to the collective bargaining process to substitute political pressure for collective bargaining when seeking changes in labour contracts.

It is readily apparent that the unique nature of certain railway operations is not appropriate for application of labour standards primarily suited to industrial establishments characterized by regular hours of work performed by a stable work force. Recognition should be given to these unusual conditions so that the burden of unfair and unjustifiable costs that would be imposed upon the railways if Bill C-126 is enacted in its present form may be minimized. The following changes are accordingly urged:

1. Part I—Hours of Work: That provision be made to exempt from the Act employees whose duties necessitate irregular hours of work as well as employees engaged in work that is limited by seasonal factors and in respect of whom conditions of employment are established under a collective agreement as such agreement is defined in the Industrial Relations & Disputes Investigation Act.

The CHAIRMAN: Would you add there, in the language of the bill, another condition—"and the benefits under the agreement are greater than the benefits under the bill"?

Mr. RICHARDSON: It is a fact, Mr. Chairman, that benefits under our agreements are greater.

Senator McCUTCHEON: What do you mean by "benefits"?

The CHAIRMAN: I am referring to clause 4, which is a general clause preceding Part I.

Senator McCUTCHEON: I do not understand that clause any more than our witness this morning did. If the clause refers to monetary benefits, then I think the witness probably gave the correct answer.

The CHAIRMAN: It would appear the sum total does not—

Senator McCUTCHEON: Who is to judge the sum total?

The CHAIRMAN: I suppose that in the first instance the employer would get advice as to the position, and the union would take advice, and if they could not resolve it—

Senator McCUTCHEON: I am afraid there would be still greater uncertainty then than there will be if this bill goes through, as to the question of fact.

The CHAIRMAN: Clause 4 contains this provision now.

Senator McCUTCHEON: I appreciate that.

The CHAIRMAN: It says:

—nothing in this act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement—There is the employee's right to work 56 hours or to work 40 hours.

Mr. RICHARDSON: It is in general. It is "under any law, custom, contract or arrangement".

Senator McCUTCHEON: All right. The contract is a union contract. They are now asked to work 56 hours, as we learned today, if their union allows them and if it is more favourable.

The CHAIRMAN: Their benefits may be more favourable as a result of that. It is the sum total we have to look at.

Senator THORVALDSON: On the whole, you have more benefits.

Mr. McNEILL: I missed Mr. Richardson's reply to your question, but as far as the C.P.R. is concerned, I think that for the purpose suggested it would be completely impractical, as Senator McCutcheon says. In our negotiations,

we have had a long negotiation with these unions, and I should like to point out that they are mature and economically powerful unions. They have traded one benefit for another. I can say this because I do not think it would be denied by the unions—the running trades, for example, have recognized their conditions of employment are not appropriate for limited hours of work, but they have sought a limitation of the hours of work for trading purposes solely. They have had the advantage of trading on those hours of work. In the result, I do not know how you could evaluate the total agreement that is arrived at by collective bargaining in those circumstances.

The CHAIRMAN: Then what you are saying is that clause 4 is of limited application in any case, where you have a collective bargaining agreement.

Mr. McNEILL: That is our contention, that the protection is in the collective bargaining process.

Senator McCUTCHEON: Certainly, where you have this dual pay.

The CHAIRMAN: My interjection provoked some discussion. Whether it clarified it or not, I do not know.

Mr. RICHARDSON: Our second recommendation is:

Part II—Minimum Wages:

- (a) That in the case of seasonal and probationary employees the minimum wage be progressive over a period of two years e.g., a minimum of \$1.00 during the first year, \$1.15 at the end of one year, \$1.25 at the end of two years;
- (b) That there be a lower minimum in respect of employees in receipt of tips or other gratuities or commissions.

Our third recommendation is:

Part IV—General Holidays:

- (a) That provision be made to exempt from the Act: (i) employees whose duties necessitate irregular hours of work as well as employees engaged in work that is limited by seasonal factors and in respect of whom conditions of employment are established under a collective agreement as such agreement is defined in the Industrial Relations and Disputes Investigation Act.

Senator ISNOR: May I inquire, in relation to that clause, if the original bill provided for seven holidays. There are now eight. Did either of your associations make representations in regard to the extra holiday?

Mr. McNEILL: No, sir, they never got a chance.

Senator McCUTCHEON: They never got a chance. It was done in the house.

Mr. McNEILL: The amendment took place in the House of Commons. This was the first opportunity we had to be heard on it.

Senator ISNOR: That is to the credit of the assembly. I understood that your answer was "No," that you never made representations. Thank you.

The CHAIRMAN: Do I understand that you are now making representations that seven general holidays instead of eight is more desirable as far as you are concerned?

Mr. McNEILL: To make it abundantly clear, if this is to be legislation on standard provisions, in our view seven is more than the standard provision, but with respect to running trades employees it is our recommendation that statutory holidays should not apply, that they should be exempted from that provision, owing to the nature of their work and the nature of their conditions of employment.

The CHAIRMAN: Is that covered in your collective bargaining agreement?

Mr. McNEILL: There are no statutory holidays provided for employees under our collective bargaining agreement.

Mr. WILSON: Nor, may I add, in the agreement of any other railroad on the North American continent, because of the peculiarity of the assignments these men work. If they have a seniority to bid for a run on a certain day, and the run operates on Christmas day, this is a fact of life in railroading and that fact has always been recognized over the decades during collective bargaining, as one of the factors which establish the high rates of pay and the dual system of pay for people who work in the running trades.

The CHAIRMAN: You say it is a peculiarity of the running trades that you cannot distinguish one day from another, is that right?

Mr. WILSON: Yes.

Mr. RICHARDSON: The second part of this recommendation is (a) that provision be made to exempt from the act probationary employees, and (b) that an employee must work both his working day before and his working day after any general holiday in order to qualify for pay for the holiday and that an employee required to work on a general holiday shall be paid in addition to his regular wages for that day, one additional day's pay at his regular rate of wages.

Senator PEARSON: In other words he gets paid for four days?

Mr. RICHARDSON: That is right sir.

Mr. Chairman, may I make room for two other railway employees to assist in answering questions?

Mr. W. T. Wilson, Vice-President, C.N.R., Railway Association of Canada: Mr. Chairman and honourable gentlemen, to assist us in answering any detailed questions you may have in connection with the complex and intricate conditions pertaining to our running trades agreements, Mr. A. M. Hand, Manager of Labour Relations for the Canadian National Railways, and Mr. T. A. Johnstone, Assistant Vice-President of Labour Relations of Canadian National Railways are here, and we would like to have them come forward, with your permission.

Senator ASELTINE: Were these changes which you are submitting presented to the minister and the Cabinet?

Mr. WILSON: Yes, they were, sir.

Senator ASELTINE: Before the bill was passed in the house?

Mr. WILSON: Yes, sir.

The CHAIRMAN: Any other questions now that we have arranged a panel of witnesses?

Senator ISNOR: I did not catch the number of days the linemen get off.

Mr. WILSON: A lineman gets two days off.

Senator ISNOR: Two days out of five?

Mr. WILSON: Out of seven; but he is subject to call. The signalman is subject to call on one of his rest days.

Senator ISNOR: Two days out of seven.

Mr. WILSON: But only on one of those days is he subject to call.

The CHAIRMAN: And if subject to call, what is the consideration for being subject to call?

Mr. WILSON: He has a normal 40 hour week unless an emergency occurs.

Senator McCUTCHEON: This morning some figures were given to the effect that there were some 139,000 or 140,000 railway employees that would be covered by this bill. Let us start first with a minimum wage. How many employees would benefit by the introduction of a minimum wage?

Mr. WILSON: I have not detailed figures. Mr. McNeill may have them in his book, but I can say this that by far the great majority of the railway employees are now paid much more than \$1.25 an hour. The employees affected would be red caps, some probationary employees, some office boys, messengers, some extra gang labourers, certainly all of the running trades and all of the shop crafts in our shops, and all of our office staffs, with the exception of the very junior office boys, are now in receipt of wages considerably in excess of \$1.25 an hour.

The CHAIRMAN: As a rough guess, of the 139,000 Senator McCutcheon mentioned, would it be one per cent, two per cent?

Mr. McNEILL: I could make a rough guess on the C.P.R. sir.

Mr. JOHNSTONE: We have 407 who are 17.

Mr. McNEILL: As one former member on the C.P.R. I can make a guess that there are some 6,000 or 7,000 who would get some adjustment.

Mr. WILSON: I should make it clear that I am not including in my answer the Canadian National hotels. Just as soon as we finish with this part of the presentation I am going to plead for an extra few minutes to have a presentation made in respect to the hotels operated by the Canadian National Railways, they being the only hotels in Canada to come under this legislation, and which places them in an impossible position competitively with every other hotel, motel, or restaurant in the country. In the hotels we have a large number of people who are subject to gratuities, and who in some parts of the country are paid less than \$1.25 an hour.

Senator McCUTCHEON: You pay them less than the minimum wage in the province in which they work?

Mr. WILSON: No, sir.

Senator McCUTCHEON: We can come to that later.

Mr. McNEILL: I think the figure is high, sir. I think it is something less than 2,000—about 1,500.

Senator McCUTCHEON: So that might mean that we are talking about two or three per cent at most of the force as we regard the railway force, leaving out the hotels.

Then turning to the hours of work, and leaving out the running trades, other than the yard trades for the moment, what percentage of your employees will benefit as the result of the hours of work in this field?

The CHAIRMAN: You mean other than running trades?

Senator McCUTCHEON: Leaving out the running trades, but including the yard running trades.

Mr. McNEILL: If you leave out people in the train service, dining room employees, conductors, and leaving out sleeping car porters, there would be about 2,000 employees, which would be about four per cent of the C.P.R. labour force.

Senator McCUTCHEON: Are they covered by union contract?

Mr. McNEILL: Yes, sir.

Senator McCUTCHEON: They have got provision for overtime?

Mr. McNEILL: Yes, sir.

Senator McCUTCHEON: What is the maximum work week, over 40 hours?

Mr. McNEILL: Yes, sir. The extra gang labourers whose work is seasonal and subject to weather conditions work 54 hours a week. Signal maintainers are paid for 45 hours a week, but they have a basic 40 hours—

Senator McCUTCHEON: I intended to leave those out too.

Mr. McNEILL: Then it will reduce the amount to 1,600 or 1,700.

Senator McCUTCHEON: Again we are talking about the two main operations?

Mr. McNEILL: Three per cent.

Senator THORVALDSON: Is it not a fact that certain employees, like porters, and so on, work for three or four or five days, probably round the clock, and then they have four or five or six or seven days off?

Mr. McNEILL: One has to be very careful in answering that. You are substantially correct. They have two conditions which apply in their case. That is, they may very well have long lay-offs of 3, 4 or 5 days after a run of four or five days. I cannot say that would happen in every instance with respect to every run. On the other hand, you have also, in calculating the hours they work, the fact they are on call or on duty. They may be sleeping. A sleeping car porter can retire and if the bell rings he has to get up and go on duty.

Senator McCUTCHEON: Sometimes he doesn't hear the bell!

Mr. McNEILL: No, sometimes he doesn't hear the bell.

Senator McCUTCHEON: Have you made any calculations? As I recall your brief, the running trades have never negotiated or have never really pressed this question of general holidays. You explained about the road gangs and signal maintenance people. As I understand your brief, the big majority of the balance of your employees are covered by collective agreements providing at the moment for seven general holidays.

Mr. McNEILL: That is correct, sir.

Senator McCUTCHEON: Have you made any calculation as to what it would cost the railways if there were eight general holidays made applicable to all employees?

Mr. McNEILL: Yes.

Senator McCUTCHEON: Could you give me the figure?

Mr. McNEILL: I would like to give you the figure in this way, sir—and I like to be careful in my terminology—running trades and road service employees do not enjoy it now, eight days, and those having seven, for the one extra day the total is a little over \$1½ million a year. I think the committee might be very interested in knowing that so far as employees who are receiving seven statutory holidays are concerned, the granting of that eighth statutory holiday costs the Canadian Pacific Railway \$740,000 a year.

Senator McCUTCHEON: Let us get these figures straight. Take just the running trades.

Mr. McNEILL: \$710,000 a year.

Senator McCUTCHEON: To pay them eight extra days?

Mr. McNEILL: Eight days on a 40-hour week is a little over 3 per cent increase in pay.

Senator McCUTCHEON: I thought it would be more than that.

Mr. McNEILL: If it is double pay, it runs up to 6 per cent.

Senator McCUTCHEON: Is that then for your company?

Mr. WILSON: That is just for the C.P.

Mr. JOHNSTONE: At 40 per cent, and you are pretty near the price competition. The 60-40 ratio holds almost inevitably in so far as Canadian Pacific and Canadian National are concerned. On non-operating proceedings, as Senator Roebuck knows, we have used that figure from time immemorial. If you inflate the Canadian Pacific figure by 40 per cent you would have the Canadian National figure almost precisely.

Senator McCUTCHEON: Would someone give me the global figure for the running trades?

Mr. McNEILL: It would be \$710,000 for the Canadian Pacific Railway Company and a little over \$1 million per annum for Canadian National—\$1,100,000 or \$1,200,000.

Senator McCUTCHEON: And for the non-operating?

Mr. McNEILL: For the other groups, to give them one extra day, \$810,000 to Canadian Pacific and \$1,300,000 for Canadian National.

Senator McCUTCHEON: There was some suggestion made in the Senate yesterday that the railways were second-class citizens, and they had to lay their own roads whereas trucks ran on roads free. I think the fact that the trucks ran free may have been disabused this morning. The C.P.R. and C.N.R. are both receiving subsidies from the Canadian Government at the moment, aren't they?

Mr. McNEIL: They are receiving payments in lieu of the freeze on freight rates.

Senator McCUTCHEON: I knew you would object to the word "subsidies". For the moment I think that is all I have to ask.

Senator BAIRD: Are most of your employees covered by collective agreements?

Mr. WILSON: A very high percentage, about 95 per cent.

Senator ROEBUCK: Mr. McNeill, you said you observed the provincial minimum wage all across Canada. How do you resolve the problem where an employee gets tips as well as the minimum wage, or do you resolve it?

Mr. McNEILL: I think the answer is that so far we have not been able to resolve it?

Senator McCUTCHEON: You leave that to the Department of National Revenue?

Mr. McNEILL: We would like to resolve it, but the problem becomes more acute as wage rates become higher.

Mr. WILSON: Nevertheless, it is always recognized at the bargaining table the union knows full well what employees are subject to gratuity payments.

Senator McCUTCHEON: Why do you say "subject"?

Mr. WILSON: Perhaps that is an unfortunate choice of words—who get gratuities or receive gratuities.

Senator THORVALDSON: In regard to people receiving tips or payments of that kind, let us take the case of redcaps. I understand redcaps receive something from the railway, do they?

Mr. WILSON: Yes.

Senator THORVALDSON: So they are actually employees of the railway. Consequently, their tips are in addition to their other wage or salary, or whatever it is called. Sometimes I think I would like to be a redcap myself.

Senator KINLEY: In the United States the railway takes part of the tips, doesn't it?

Mr. McNEILL: In some railways they have a different system. They charge so much per bag which goes to the railway, and the railway then pays the redcap.

Senator McCUTCHEON: That is the question I was going to touch upon. That is being done at Montreal airport now.

Mr. WILSON: The redcap or porter is charged for the tags, and as he uses them he collects the money when he turns them in.

Senator PEARSON: That is the same on the package deal on the railway fare. The tip is along with the package deal.

Senator KINLEY: Does this minimum wage interfere with your apprentices or beginners?

Mr. McNEILL: As I understand the act, no.

Senator KINLEY: You have an apprenticeship system for your machine shop?

Mr. McNEILL: As I understand it, when you are in training it does not affect you.

Senator KINLEY: What do you do for beginners?

Mr. McNEILL: I do not know we have any, if many, classes, which you could call beginners. We have apprentices, we have probationary employees. We are asking for exemptions for them because they are probationary employees.

Senator THORVALDSON: I do not know who to ask this question. In the light of your brief, its general tenor and contents as a whole, and in the further light of the fact very few people will benefit to any great extent, very few of your employees will benefit to any great extent from this act—

Senator McCUTCHEON: Or to any extent.

Senator THORVALDSON: To any extent, well, very few to any great extent—and in light of the fact, further, the provisions of the act become very onerous to the railways, administratively, and so on, why don't you ask for complete exemption from the operation of the act?

Mr. McNEILL: I don't mind giving my own answer to that, and that is that we did not think that was a possibility.

Senator McCUTCHEON: You did not really think you were going to be heard by the Senate.

Senator THORVALDSON: I think you have a pretty strong case. I wonder if there is any answer to the case you have made. If there is not, I know I would be fairly well inclined myself to say you ought to have exemption in the interests of this country and the economy.

Senator CHOQUETTE: All the others who have made representations are in the same boat, so far.

Mr. McNEILL: We did not ask for exemption from the annual vacations, for example, because we are meeting that standard now. In regard to the minimum wage, we feel there are some spots where it is hurting us, but we felt time would take care of that, so our attitude was not quite as positive there, if you like. But on the hours of work, this apart altogether from the cost, which is a heavy cost, and the statutory holidays, apart from the cost which is a heavy cost, because of the nature of the conditions under which many of our services are performed it becomes a practical as well as a costly problem. The railways have probably the highest labour content in their costs of any industry in the world, I think. Fifty-five cents of every dollar of our revenue the railway pays out in direct payroll costs. That is why I quoted the figure that the result of the one additional statutory holiday, making 8 instead of 7, was a price for the railway of \$800,000.

Senator McCUTCHEON: Your railway alone.

Mr. McNEILL: Yes, the C.P.R. alone. The individual employee did not get it, I grant you that, but the cost to the railway was very very heavy.

Senator THORVALDSON: Is it not also a fact that there will be administrative costs as regards the whole act so far as the railways are concerned?

Mr. McNEILL: Yes, indeed. Furthermore I am thinking now of one of the witnesses this morning who was asked if he would come before a board of inquiry and he thought he would because that would be his only chance. But if he did there would be no chance for us to get there.

The CHAIRMAN: That is on the basis that there would be just one board of inquiry. But there is no reason to believe there would be just one, there might be 10 or 20 or 30 from time to time.

Senator ISNOR: I would like to ask the representatives from the Canadian National as to whether they included in their brief, or why they didn't include in their brief any reference to their trucking operations.

Mr. WILSON: Mr. Chairman, the trucking operation is separate and apart from our railroad operations and I understand, and I think I am correct in this, that our trucking operations were represented in the statements made by the trucking associations.

Senator ISNOR: That was to have been my second question.

Mr. WILSON: We stand or fall by their representations.

Senator ISNOR: You are a member, and those representations were made along the lines of your approach?

Mr. WILSON: I might add that we support the representations made by the marine industry today, and we have referred to that briefly in our brief. The Canadian National operates on behalf of the Government the steamship services around Newfoundland and around the coast of Labrador as well as the steamship services on the west coast.

Senator ROEBUCK: Mr. Wilson, you have made quite a case regarding hours of labour, but you have said very little as far as I know, as to the remedial effect of section 51. This section, as you know, gives you the right to make application for remissions. Have you anything to say as to the adequacy or inadequacy of that section?

Mr. WILSON: Well, Mr. Chairman and Senator Roebuck, this morning an earlier witness made reference to the provisions of section 51, as amended, and I think he referred to them as "escape hatches", and to some extent there is a possibility that representations could be made for the deferment of the application of the terms of hours of work in this act to the minister, and the minister could grant such exemptions for a period of up to 18 months, and after that through a tribunal or board of inquiry or some kind of organization the exemption could go on from there. However, we find this unsatisfactory because it would require presentation of argument and documents and lengthy procedures in respect of various groups of employees, whether they be running trains or marine services. We would find this onerous. Besides that, during the period of the first 18 months an exemption might be granted for three months and you then apply to renew it and while we have had several discussions with the Minister of Labour and his advisers on this point we are not altogether satisfied that this is the solution to the problem in that regard.

The CHAIRMAN: If I may interrupt a moment, Senator Roebuck. I have to leave at six, and I have asked Senator Hugessen if he would take over, and he has agreed to do so. I know the committee will approve of that. I wanted to make an announcement as to when the committee will meet again. The proposal is that the committee should meet on Tuesday morning at 11, and that means we would have the whole day, if we took that long, to deal again with this bill. In the course of that there will be other witnesses to hear on Tuesday morning; the Canadian Labour Congress wishes to be heard, and I understand the Air Transport Association have asked to be heard, and Senator Thorvaldson indicated some people from his area also wish to be heard.

Senator THORVALDSON: The grain people of western Canada.

The CHAIRMAN: So that we will be hearing witnesses on Tuesday morning. When we hear the witnesses we will then resume section by section examination of the bill. We have got as far as section 15. When that is completed we will hear the minister, and then we will deal with the sections one by one,

whether they are carried or whether there are any amendments proposed. That is the order of business. I am sorry that I must leave at this time, but Senator Hugessen has agreed to take over.

Senator THORVALDSON: Is there any possibility of having the transcript of the proceedings of yesterday and today in our possession before 11 o'clock on Tuesday—say sometime on Monday?

The CHAIRMAN: We will do everything we can to arrange that. Of course we must not twist the arms of the reporters because then we would never get it.

Senator MCCUTCHEON: They are not yet subject to the 40-hour week?

The CHAIRMAN: No, and thank God for that. I understand the difficulty may be with the printing bureau.

Senator KINLEY: Will we get a copy?

The CHAIRMAN: When it is available.

Senator CHOQUETTE: How long will the committee sit?

The CHAIRMAN: We have to hear from the C.N.R. hotels and then we are through.

Mr. WILSON: Mr. Chairman, we want to thank you also for the attention you have given to us.

The Chairman (Hon. Mr. Hayden) left the Chair.

Hon. A. K. Hugessen in the Chair.

Senator ROEBUCK: Mr. Wilson, I have not quite concluded. I was going to ask another question. I was going to say that the amount involved is very considerable so that I am not particularly impressed with the difficulties that the management would encounter in making its case to the minister. But is that your only objection to the outs you find in section 51—that is the annoyance and the expense of making the case?

Mr. WILSON: Well, no. That is not the only one. We feel that we have a case that should be recognized and that there should be exemptions.

Senator THORVALDSON: That it should be recognized by Parliament, is that what you mean?

Mr. WILSON: Perhaps it is improper to say this, but we don't want to be subject to anybody who tinkers with what has been passed by Parliament.

Mr. McNEILL: Could I comment on that? One of the problems that we see is that each of the items or conditions of work covered by this statute would become subject to two contests. They would become subject to the contest of collective bargaining, and in the event of failure there they would become subject to the contest before the board of inquiry, and in view of varied services and the large number of classes of employees, I feel that this would impose a terrific burden on the employer as well as on the administrators of the act.

The ACTING CHAIRMAN: Could I ask this question—you suggest a number of specific amendments in your brief that was read a few minutes ago. Did you submit those specific amendments for the consideration of the minister before the bill went through the Commons?

Mr. McNEILL: I think that question was asked before and I think it needs a little explanation. We had meetings with the ministers and members of the department, and in our discussions we covered our problems and we dealt with suggestions and in some detail suggested we should receive exemptions. Other discussions were carried on at which quite specific suggestions were made but on a less formal basis than that of a brief being presented. This brief was subsequently filed with the Minister of Labour and other members of the

cabinet in a formal manner, but it was not before a parliamentary committee because there was no such committee. It has now been presented here.

Senator PEARSON: After the bill came out, you have never presented your views since then?

Mr. McNEILL: This was the first opportunity.

Senator McCUTCHEON: This brief was presented in January, was it not?

Mr. McNEILL: In January this year it was presented to the Minister of Labour and other ministers, but discussions were carried on prior to that with the Department of Labour.

Senator McCUTCHEON: But discussions of the brief were held before.

Senator CHOQUETTE: I guess we are ready to hear about the hotels now.

The ACTING CHAIRMAN: Anything else on this point?

Senator BROOKS: May I ask one question. Perhaps this has been answered, but if the 40 hour week goes into effect it will mean you will have to employ more men. What would be the percentage increase in the number of your employees?

Mr. McNEILL: I dislike answering a question in an unsatisfactory way, but here is the problem—and I am relating it to the class of employees that we are concerned with, namely, the running trades employees in the road service, or the ones that are on the road service and concerned in the running of the trains. In some areas you could handle your runs with additional crews, but in other areas you could not. You might have a run in western Canada, or some other part of the country, which one crew will handle, although it may require more than 40 hours per week of their time, but there is not enough work for two crews, and you could not find two crews in that area anyway.

Senator BROOKS: You still have to pay extra, then?

Mr. McNEILL: That is what we are doing now. We are paying overtime now.

Mr. JOHNSTONE: May I add a word, Mr. Chairman? It should be thoroughly understood that it is not possible to introduce a 40-hour week into the road service employees' arrangement. It is not possible to do it without doing something to some of the basic elements. We have monthly guarantees which are quoted in this brief. The passenger train man has a guarantee, and so has the man in the engine service—the fire man or the engineer. Over and above that there are the mileage regulations that we quoted to you. There are maximum mileage regulations, and unless you are going to destroy and discard all this that has taken some 80 odd years to develop—the thing known as the dual system of pay—in its entirety, you cannot possibly introduce the 40 hour week into the road service.

Senator McCUTCHEON: It will cut right through the heart of collective bargaining, and put you in a position different from that of the other railroads?

Mr. JOHNSTONE: Yes, all other railroads on this continent, and on many other continents, as well.

Senator KINLEY: Mr. Chairman, may I ask if there is any regulation against moonlighting on the railways?

Mr. McNEILL: Against moonlighting, did you say?

Senator KINLEY: Yes, to prevent a man indulging in moonlighting after he is through with his work on one day, and then coming back to work very tired the next day?

Mr. McNEILL: Since you have asked the question I will answer it in this way—I can give you one example of where a man's hours are well in excess of the 40 hours per week, but his hours of working and being on duty are

so different from normal hours that he is able to work in a store in Montreal for eight hours a day and every day of the week. He brings in his train in the morning, reports to the store, and then takes his train home at night.

Senator KINLEY: Under clause 5(1) the eight hour day is to provide for a period of rest to the worker. It is to give the man a chance to rest.

Mr. McNEILL: Yes.

Senator KINLEY: If he works eight hours a day at some other job then he is not resting, and he comes to his place of regular work in the morning tired, and he might be a danger.

Mr. McNEILL: I am not so sure that an idle man might be more dangerous.

Senator KINLEY: Yes, an idle man might be more dangerous, but suppose he goes out and works in competition with the railroads.

Mr. McNEILL: I would answer that by saying that legislation of this sort, to my mind, seeks to establish standards that are for the protection of health, safety and to provide workers with proper leisure time and proper rest. If it does not provide that then it may be affording an opportunity for something to happen that would be a great deal worse than what we now have, and I do not think that the standards here are fair to our operation.

Senator McCUTCHEON: We have members of Parliament who are moonlighters.

Senator ISNOR: Mr. Chairman, it is five minutes after 6. Are we going to hear representations from the hotels?

The ACTING CHAIRMAN: Mr. Wilson is here to make representations on behalf of the hotels. Is it the committee's wish to hear them now?

Hon. SENATORS: Agreed.

Mr. WILSON: Mr. Chairman, Mr. S. S. Chambers, our General Manager of Hotels, has a very short brief he would like to read.

The ACTING CHAIRMAN: Will you come up to the front, Mr. Chambers?

Mr. WILSON: I think we have sufficient copies of this brief to pass around to the members of the committee if they would like to have them in order to follow Mr. Chambers.

The ACTING CHAIRMAN: Yes, that would be very convenient.

Mr. WILSON: Before Mr. Chambers starts I would like to say that obviously the Railway Association of Canada which has spearheaded the brief we have just heard and discussed could not include any representations on behalf of Canadian National Hotels in its brief, and that is why it is a separate presentation.

Mr. S. F. Chambers, General Manager, Canadian National Hotels: Mr. Chairman and honourable senators, my submission, as Mr. Wilson has just said, concerns the Canadian National Hotels as Bill C-126 affects its operation. Canadian National Hotels are not opposed to labour legislation which under certain circumstances may be necessary to provide employees with minimum standards in respect to their working conditions. Such legislation, however, must be realistic if unintended negative effects are to be avoided and if legitimate interests of various groups affected are to be protected to the greatest extent possible.

In this submission, Canadian National Railways urge that its hotel employees be exempted from Part II of Bill C-126 which deals with minimum wages and that its summer employees at Jasper Park Lodge be also exempted from Part I which deals with standard hours of work, for the following reasons:

1. Bill C-126 discriminates against Canadian National Hotels as the only segment of the hotel industry affected by the proposed Code;

2. The application of a \$1.25 minimum wage would impose prohibitive additional wage costs on Canadian National Hotels which already operates in a highly competitive industry;
3. Such increased wage costs would seriously damage the already precarious competitive position of Canadian National Hotels since its employees already enjoy wages much higher than wages paid in non-railway hotels, as well as fringe benefits that are virtually non-existent in the industry, and since the financial position of some C.N. hotels is already highly marginal;

Senator McCUTCHEON: That is the understatement of today so far.

Mr. CHAMBERS: Yes, indeed it is, senator.

4. These substantial unproductive additional costs, therefore, could not be absorbed for the reasons outlined in (3) above, and, as a result, could endanger the future employment opportunities for C.N. hotel employees;
5. The imposition of a standard 40-hour work week at Jasper Park Lodge would have the effect of either increasing the wage bill by an additional 20% (over and above the 57% increase in the total wage bill resulting from the application of \$1.25 minimum wage) or reducing sharply the income of summer student employees who tend to rely on this income during the academic year.

Canadian National Hotels are the only hotels in Canada coming under federal jurisdiction. They are the Newfoundland Hotel in St. John's, the Nova Scotian Hotel in Halifax, the Chateau Laurier in Ottawa, the Fort Garry Hotel in Winnipeg, the Bessborough Hotel in Saskatoon, the MacDonald Hotel in Edmonton and the Jasper Park Lodge in Jasper. These seven hotels provide employment for approximately 2,280 individuals.

Senator McCUTCHEON: May I interrupt for a moment, Mr. Chairman, to say that I notice that the Queen Elizabeth Hotel and the Vancouver Hotel are not included in that list. That is, of course, because although you own them they are run by another organization.

Mr. WILSON: That is right, they are run by Hilton of Canada. This has been discussed before, and perhaps that is a question that might be asked of the Minister of Labour when he is before the committee, because he has expressed views on this subject.

Senator McCUTCHEON: Thank you.

Mr. CHAMBERS: No other hotel chain, individual hotel, motel or motor hotel would have the provisions of Bill C-126 applied to it.

The mandatory imposition of standard working conditions, through legislation, on a very small segment of the hotel industry, therefore, would confer special benefits on a select group of employees, and damage the financial position of the hotels in which they are employed. This discriminatory aspect of Bill C-126 is wrong in principle and should in itself warrant exclusion of Canadian National Hotels from the application of the Code. Furthermore, the adverse long-term economic effects of certain provisions of the proposed Bill on C.N. hotels and their immediate cost impact, which are discussed below, would also justify exclusion.

The proposed uniform minimum hourly wage of \$1.25 would affect approximately 60% of total hotel staffs, a large proportion of whom receive substantial additional earnings in the form of gratuities. Wage rates of employees affected would be increased, on the average, by approximately 39%. In respect to the only resort hotel involved, 86% of the staff would be affected

by a minimum hourly wage of \$1.25 and the immediate economic impact would be, as nearly as can be estimated, an average increase of 132% in the wage rates of employees affected. These costs have been calculated after including in present hourly rates allowance for meals and lodging in the amounts recognized by the Unemployment Insurance Commission and the Income Tax authorities.

Another important factor is the effect of the proposed minimum wage on other existing wage rates. Since almost all wage differentials in the present wage structure are small, the wage structure would become distorted and a realignment at a higher level would be required which would approximately double the immediate increase in the total wage bill. In fact, the January 1, 1965 issue of *Canadian Transport*, the official publication of The Canadian Brotherhood of Railway, Transport and General Workers stated that the application of the proposed \$1.25 minimum wage on hotel employees "would throw the scale of wage differentials completely out of kilter" and that "extensive renegotiations of hotel agreements would appear necessary".

Over the past few years the hotel industry has been undergoing radical and widespread changes and never before has Canadian National Hotels been faced with greater and keener competition. Statistics published by the Dominion Bureau of Statistics show that the percentage of room occupancy in all hotels in Canada has decreased by more than 12% over the ten year period 1950-1960. Canadian National Hotels are no exception.

Senator ISNOR: What is the average? Is it 65 per cent?

Mr. CHAMBERS: The average occupancy rate would run around 61 or 62 per cent.

The mandatory imposition of a minimum hourly wage of \$1.25 would damage further the already precarious competitive position of Canadian National Hotels. This would be unfair and detrimental not only because competitors would not be affected by these provisions but also because Canadian National Hotels would be forced to increase their wage rates which are already the highest in the industry. A comparison of wages paid in Canadian National Hotels and other non-railway hotels in Canada, based on the most recent wage survey of the Department of Labour, shows that the hourly rates of pay in C.N. Hotels are on the average 16 cents per hour higher than wage rates paid by competitors. Application of the \$1.25 minimum wage to C.N. Hotel employees would further widen the existing wage gap to the point where it would be uneconomic to compete at the existing level of hotel rates and prices.

Inequities which would result from the application of Part II of the Code are even more pronounced than is at first apparent in view of the fact that in addition to existing wage advantages, employees of C.N.

Hotels enjoy fringe benefits in the form of pension benefits, health and welfare benefits, and free transportation privileges, etc., that are virtually non-existent in non-railway hotels.

The current financial position of Canadian National Hotels also reflects its precarious competitive position. During the past decade the net income of Canadian National Hotels has declined to the point where, in some recent years, deficits for hotels, individually and as a group, were incurred. The principal factors influencing the trend have been increased competition and the impact of rising payroll costs.

Any further costs of the magnitude foreseen by application of Part II of the Code to C.N. Hotels would mean that the Company would have no hope of a profitable operation in the case of many hotels. There is no reason to believe that higher wages would lead to improved productivity which in turn would offset the impact of such additional wage costs.

In order to minimize the negative effects of this additional cost impact, the apparent solution would be to increase the level of hotel rates and prices or to lower standards. In the face of very keen competition, however, as indicated by the rate of decline in room occupancy over the last ten years, any attempt to do either of these things would undoubtedly reduce still further the rate of room occupancy, nullifying, thereby, the effectiveness of such action.

Long Term Effects:

In order to minimize losses which would result from the imposition of a minimum hourly wage of \$1.25 the Company may be forced to consider disposal of some hotels.

Railway hotels were built in an era when it was considered advisable to have them in order to promote passenger business. This is no longer the case. The travel market has been altered radically in the past few years, with the automobile and the airplane giving most convenient access to hotels and motels on the outskirts of the city rather than downtown where railway hotels were built. If this already existing competitive disadvantage were to be aggravated by the imposition on Canadian National Hotels of unfair and unrealistically high minimum wages compared with other hotels, the company might be forced to adopt other measures, the negative effects of which on Canadian National Hotel employees would, unfortunately, be unavoidable.

There are limits beyond which fundamental economic laws and relationships cannot be infringed without producing undesirable negative effects. It can surely not have been the intent of the minimum wage section of Bill C-126 to endanger the competitive position of Canadian National Hotels and thereby endanger the jobs of the employees.

With the exception of Jasper Park Lodge where summer employees work 48 hours per week, employees of Canadian National Hotels are paid on the basis of 40 hours per week.

Part I of Bill C-126 which deals with a standard 8-hour day and a 40-hour work week would present serious problems for the operation of Canadian National's only resort hotel. Unlike city hotels, the Jasper Park Lodge is operated for approximately four months a year and largely employs students during their summer vacations as well as other unskilled workers. These summer employees work six days a week and do not want two days off per week since most of them are away from home and since they are mostly interested in the money they can earn and on which they rely during the academic year.

Most of the positions held by students are "gratuity" or "tip" positions and if they were granted two days off, to conform with Part I of the Code, the hours during which they can earn gratuities would be shortened and their income would therefore be sharply reduced. If, on the other hand, actual hours are maintained, a 48-hour week, the imposition of a basic minimum wage and penalty rates of time and a half for work done during the sixth day of a week at Jasper Park Lodge would have the effect of increasing the total wage bill by 20% in addition to the 57% increase in the wage bill resulting from the application of a \$1.25 minimum wage during the first five days of the week.

Needless to say, a mandatory increase of 77% in the total wage bill can certainly not be absorbed and would have to be at least partly recouped in some way at the expense of either the patrons or the employees.

The application of the proposed standard hours of work would therefore do injury both to the employees and to the Company, cancelling thereby the desired positive effects intended in the Bill.

In view of the discriminatory aspect of the proposed minimum hourly wage of \$1.25 and its damaging impact on the competitive position of Canadian

National Hotels, and in view of the unique nature of the only resort hotel involved, the following changes in Bill C-126 are accordingly urged:

1. that Canadian National Hotels be indefinitely exempted from the application of the minimum hourly wage of \$1.25
2. that provision be made to exempt from the Act summer student employees whose status differentiates them significantly from permanent members of the labour force.

The ACTING CHAIRMAN: Thank you, Mr. Chambers. May I start the ball rolling by asking you one question. Why does this not apply to the C.P.R. hotels?

Mr. CHAMBERS: The C. P. hotels come under provincial legislation.

Senator McCUTCHEON: The Canadian National hotels at one stage were declared to be work "for the general national advantage of Canada". The C.P.R. hotels were not.

The ACTING CHAIRMAN: Then we could avoid this whole thing by amending that declaration, or rescinding that declaration.

Senator CHOQUETTE: You would have all the independent hotels that are not C.P. or C.N.R., they would be competing with the Canadian National.

Mr. WILSON: I am afraid it is not quite so simple. I made the statement once that the C.N. hotels were under the jurisdiction of the Parliament of Canada because, as Senator McCutcheon has said, they were at one time declared to be operated for the general advantage of Canada. Our law officers in Montreal took me to task for that statement and said that that is not so. I merely put that on the record, because I am not a lawyer.

In any event, the fact is that we deal in respect of employees in all those hotels with a strong Canadian union, the Canadian Brotherhood of Railway Transport and General Workers. They are certified as bargaining agents for the employees in those hotels, under the Industrial Relations and Disputes Investigation Act, which is a federal statute.

Before any change in the status of those hotels could be made, to take them from the federal jurisdiction and bring them to the provincial jurisdiction, a comparable move would have to be made to remove the certification of the union from the federal act to the provincial act. This, I think, would be quite a chore. For that reason, I do not think the answer to our tremendous problem in respect of the operation of these hotels lies in any simple declaration such as has been suggested.

Senator POWER: What about the employees of the C.P.R.?

Mr. WILSON: Perhaps Mr. McNeill might answer that.

Mr. McNEILL: I think it is just as simple. The only reason C.N. hotels are subject to Dominion jurisdiction is because of the declaration, which affects them only. If it were not for that declaration, they would remain under provincial jurisdiction. Our hotels are under provincial jurisdiction and no such declaration has ever been made.

Senator POWER: Is not the union which deals with you the same union as deals with the C.N.?

Mr. WILSON: Yes, but they are certified under the provincial acts to deal with us.

Senator POWER: Are not the union people who deal with you the same in the C.N.R.?

Mr. McNEILL: Yes, but they are certified under the provincial acts.

Senator COOK: Are most of your employees under the collective agreement?

Mr. CHAMBERS: About nine per cent of our employees are under the collective agreement.

Senator McCUTCHEON: Were those representations made to the Minister of Labour?

Mr. WILSON: Yes.

Senator McCUTCHEON: When?

Mr. WILSON: If I may be permitted to call on my memory I think I am correct in saying that Mr. McNeill and I visited with the officials of the Department of Labour prior to October 1 and had some general discussions covering many, if not all, of the points that have been raised today in the presentations made to this committee. Following that, a day or two before the bill was introduced in the house, which I believe was October 1, 1964, the Vice-President of the Canadian Pacific and I also made representations to the Minister of Labour and his officials, and there were several meetings subsequent to that, when these various points were quite succinctly presented to all concerned.

The ACTING CHAIRMAN: But I think Senator McCutcheon's question was directed specifically to this hotel question.

Senator McCUTCHEON: Yes.

Mr. WILSON: It was covered at the same time as the railway subject was covered.

Senator McCUTCHEON: You made two representations here, about a minimum wage and hours of work for summer students. Did you get any encouragement there?

Senator ISNOR: Why not ask the minister that?

Senator McCUTCHEON: I will, but I want to ask Mr. Wilson now if he would care to reply.

Mr. WILSON: We had a sympathetic hearing, Mr. Chairman.

Senator HNATYSHYN: In view of the fact that there would be a mandatory cost of 77 per cent in the total wage bill, and if the act applied, would it be possible to operate the summers at Jasper Lodge?

Mr. WILSON: Not economically, no. The increase in cost is more absorbed in what we make out of profit. The increased cost for the entire system we estimate at just over \$1 million in wages.

Senator POWER: What would be the increased cost to Jasper Lodge?

Mr. WILSON: About \$400,000, senator. There is, of course, a choice of getting into professional help instead of students, but you would still be faced with your increased cost and your 40 hour week, which is different from the 48 hour week which they work now.

Senator POWER: Frankly, I do not know why you are asking for sympathetic considerations for students. After all, there are only two or three months work for probably 100 students, and it has not a great deal to do with the economy of the country. Of course, it might be a nice thing for them.

Mr. CHAMBERS: There are about 500 students involved, Mr. Chairman.

Senator HNATYSHYN: It is sort of traditional for students to go to this resort. I know that, personally, because I had a boy at Jasper Lodge. They are very keen to get these jobs.

Mr. CHAMBERS: Yes, and they do a good job.

Mr. WILSON: Regardless of whether they are students or not, the payment of the rate and the application of the hours of work in an operation of that kind at Jasper, as contemplated by this bill if it became law, would make it practically impossible profitably to operate an undertaking of that kind on a seasonal basis.

Senator POWER: I can understand that, but I cannot understand bringing in this sympathetic consideration for the students in such an important matter as this.

Senator ROEBUCK: I have one question. Mr. Chambers, I am interested in this declaration that C.N.R. hotels are for the general benefit of Canada. No doubt the railway asked for that declaration that the hotels of the C.N.R. should be declared for the general benefit of Canada. Did you ask for it?

Mr. CHAMBERS: I will have to ask Mr. Wilson that question.

Mr. WILSON: A few moments ago, when Senator McCutcheon made his statement that the hotels of the C.N.R. were operated for the general advantage of Canada, I told him I made a similar statement some months ago, in September, when I was speaking to the Minister of Labour on this very subject. Having made this statement, our law officers in Montreal corrected me and told me it was not true, that there never has been such a declaration. I put that on the record now. I cannot go deeper than that, or document anything at this point, but I am sure that they have not been declared at any time as being operated to the general advantage of Canada.

The ACTING CHAIRMAN: Should you not enlighten us, then, as to what legal basis exists for the C.N.R. hotels being different from all others in the country?

Senator ROEBUCK: Why does this bill apply to you at all?

Mr. WILSON: This question is a complex one and goes back many, many years. I think it is tied to the realization and acceptance of the fact that the C.N.R. system and the hotels are an instrument of the Crown, they are Crown properties—Crown companies. Prior to 1950 the labour negotiations which we carried on with our non-operating unions included the hotels and also included the Newfoundland steamships. Then Mr. Justice Kellock made a ruling in 1950 declaring that the hotels and steamships should bargain separately from the railway, that there should be no relationship between wage rates and working conditions in the hotel industry to the railway employees; and he went on to say, if I can quote him correctly, that it was his judgment that hotel rates of pay and working conditions should more properly be related to those applicable in the area in which the hotels operated. From that point on we have had separate negotiations; but the certification of these unions representing the employees is still under the federal act—the Industrial Disputes and Investigation Act, which covers all of the industries that are covered by this bill C-126, those industries and undertakings that are operated in Canada under the exclusive legislative jurisdiction of the federal Parliament, and that includes our hotels.

Senator ROEBUCK: The fact that the unions operate under a certification of the dominion board is by no means final, so far as your hotels are concerned, as to whether you are subject to dominion or provincial law, whether you are under one clause or the other of the British North America Act. It seems to me that this is a very important question at this moment.

The ACTING CHAIRMAN: It goes to the whole basis.

Senator ROEBUCK: Exactly. It goes to show that the act does not apply to you, and I am rather inclined to think that that is the case.

Mr. WILSON: With great respect that is precisely what we have been trying to say, that this act should not apply to hotels such as Jasper.

Senator ROEBUCK: It only applies to you if you are within the dominion jurisdiction. If you are not in it, it is a question of fact.

Senator CHOQUETTE: They are necessarily if they belong to the crown, and the C.N.R. belongs to the Government; and necessarily from the act, right

from the beginning the C.N.R. hotels would come under this legislation. We are getting away from the subject by talking about certification, unions, and all that.

Senator ROEBUCK: That has nothing to do with it.

Mr. WILSON: It is a complex issue, I grant you that. The Chateau Laurier at one time belonged to the Grand Trunk.

The ACTING CHAIRMAN: Yes, it did.

Senator ISNOR: If you have a deficit the country has to meet that deficit. I am not saying you have, but if you have it is included in the Canadian National Railways' Annual Report, isn't it?

Mr. WILSON: Yes. Another thing, Mr. Chairman, we in the hotel operation are subject to the Female Employees Equal Pay Act.

Senator ROEBUCK: Provincial?

Mr. WILSON: No, federal, the federal Female Employees Equal Pay Act. We are not permitted to have a male-female differential in any of our hotels, but every other hotel in the country has.

Senator ROEBUCK: I would rather like to hear from your legal department on this question.

The ACTING CHAIRMAN: Did you submit this brief to your legal department before you presented it here?

Mr. WILSON: Yes.

The ACTING CHAIRMAN: They approved it as a proper statement of fact?

Mr. WILSON: Yes, definitely.

The ACTING CHAIRMAN: I suppose we have to accept that.

Senator ROEBUCK: They did not apply themselves to this problem specifically, did they?

Mr. WILSON: No, I must confess I do not think they were seized of the problem to the extent they should have been, Mr. Chairman.

The ACTING CHAIRMAN: Could you get out of this simply by leasing your hotels to some corporation, the way the Queen Elizabeth in Montreal and the Vancouver Hotel were?

Mr. CHAMBERS: It seems that could be done, as undesirable as it might be.

Senator POWER: This is if it is in the public interest of Canada. It is still in the public interest of Canada, and that is not the argument really. The argument is based on some other reason than a declaration of hotels in the public interest of Canada. The C.P.R. is in the public interest of Canada, and nearly every railway at some time or another has been.

The ACTING CHAIRMAN: Honourable senators, I do not think we can carry on much further with this. We will meet at 11 o'clock on Tuesday morning, March 9.

The committee adjourned.



Second Session—Twenty-Sixth Parliament
1964-1965

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

To which was referred the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses".

The Honourable **SALTER A. HAYDEN**, *Chairman*

TUESDAY, MARCH 9, 1965

No. 2

WITNESSES:

Department of Labour: Hon. Allan J. MacEachen, Minister of Labour; Mr. H. S. Johnstone, Director, Labour Standards Branch; Miss E. Lorentsen, Director, Legislation Branch. *Canadian Labour Congress:* Mr. J. Morris, Executive Vice-President; Mr. A. Andras, Director of Legislation. *Air Transport Association of Canada:* Mr. Angus C. Morrison, Executive Director; Mr. G. E. Manning, Director, Industrial Relations, Canadian Pacific Airlines; Mr. G. E. Bolton, Director, Personnel and Industrial Relations, Air Canada; Mr. A. R. Eddie, Superintendent, Industrial Relations, Pacific Western Airlines. *Canadian Warehousing Association:* Mr. Paul G. Kenwood, Vice-Chairman, Household Goods Division; Mr. D. G. Slater, President. *International Brotherhood of Teamsters:* Mr. I. M. Dodds, Canadian Director; Mr. Ken McDougall, President, Local 938. Mr. Cecil Lamont, President, North-West Line Elevators Association; Mr. G. Heffelfinger, President, National Grain Company; Mr. Geo. H. Sellers, President, Federal Grain Company and Alberta Pacific Grain Company; Mr. W. J. Parker, President, Manitoba Wheat Pool and also representing Alberta and Saskatchewan Wheat Pools; Mr. A. M. Runciman, President, United Grain Growers Limited.

APPENDICES:

- "A" Documents submitted by the Air Transport Association of Canada.
"B" Letters submitted by The Shipping Federation of Canada.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Leonard	Taylor
Crerar	Macdonald (<i>Brantford</i>)	Thorvaldson
Croll	McCutcheon	Vaillancourt
Davies	McKeen	Vien
Dessureault	McLean	Walker
Farris	Molson	White
Fergusson	Monette	Willis
Flynn	O'Leary (<i>Carleton</i>)	Woodrow—(50).
Gelinas		

Ex officio members: Brooks, and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 3, 1965.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Connolly, P.C., for second reading of the Bill C-126, intituled: 'An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, March 9, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Provencher*), Blois, Brooks, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Gershaw, Hugessen, Isnor, Kinley, Lambert, McCutcheon, McKeen, McLean, Pearson, Power, Roebuck, Thorvaldson and Walker—(25).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses", was further considered.

The following witnesses were heard:

Canadian Labour Congress:

Mr. J. Morris, Executive Vice-President.

Mr. A. Andras, Director of Legislation.

Air Transport Association of Canada:

Mr. Angus C. Morrison, Executive Director.

Mr. G. E. Manning, Director, Industrial Relations, Canadian Pacific Airlines.

Mr. G. E. Bolton, Director, Personnel and Industrial Relations, Air Canada.

Mr. A. R. Eddie, Superintendent, Industrial Relations, Pacific Western Airlines.

It was agreed that certain documents from the Air Transport Association be printed as Appendix "A" to these Proceedings.

Mr. Cecil Lamont, President, North-West Line Elevators Association.

Mr. G. Heffelfinger, President, National Grain Company.

Mr. Geo. H. Sellers, President, Federal Grain Company and Alberta Pacific Grain Company.

At 12.45 p.m. the Committee adjourned.

At 2.15 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Provencher*), Blois, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Hugessen, Isnor, Kinley, Lambert, McCutcheon, McKeen, McLean, Pearson, Power, Roebuck, Thorvaldson and Walker—(24).

The following witnesses were heard:

Mr. W. J. Parker, President, Manitoba Wheat Pool and also representing Alberta and Saskatchewan Wheat Pools.

Mr. A. M. Runciman, President, United Grain Growers Limited.

Canadian Warehousing Association:

Mr. Paul G. Kenwood, Vice-Chairman, Household Goods Division.

Mr. D. G. Slater, President.

International Brotherhood of Teamsters:

Mr. I. M. Dodds, Canadian Director.

Mr. Ken McDougall, President, Local 938.

It was agreed that two letters from The Shipping Federation of Canada be printed as Appendix "B" to these Proceedings.

Department of Labour:

Mr. H. S. Johnstone, Director, Labour Standards Branch.

Miss E. Lorentsen, Director, Legislation Branch.

At 4.30 p.m. the Committee adjourned.

At 5.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Provencher*), Blois, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Hugessen, Isnor, Kinley, Lambert, McCutcheon, McKeen, Pearson, Power, Roebuck, Thorvaldson and Walker—(23).

The following witness was heard:

The Hon. Allan J. MacEachen, Minister of Labour.

At 6.20 p.m. the Committee adjourned until Wednesday, March 10th, at 9.30 a.m.

Attest:

F. A. JACKSON,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 9, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses", has in obedience to the order of reference of March 3rd, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 9, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-126, respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses, met this day at 11 a.m.

Senator SALTER HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: I call the meeting to order. We have a number of organizations that wish to be heard today, namely, the Canadian Labour Congress, Canadian Warehousing Association, Air Transport Association of Canada, Grain Elevator Operators, and International Brotherhood of Teamsters. Subject to what the committee may say, I am proposing to call first the representatives of the Canadian Labour Congress, represented by Mr. J. Morris, Executive Vice-President; Mr. A. Andras, Director of Legislation, and Mr. A. J. Hepworth, Assistant Director of Legislation. I understand Mr. Morris is going to present the brief on behalf of the Canadian Labour Congress.

Mr. J. Morris, Executive Vice-President, Canadian Labour Congress: Mr. Chairman and honourable senators: The Canadian Labour Congress appears before you in connection with Bill C-126 because it has a legitimate concern about legislation of this sort. The Congress represents more than one million trade union members in Canada. It represents, among these, a majority of the organized workers whose employers come within the jurisdiction of the Parliament of Canada.

The Congress wishes to say at the outset that it favours the principles embodied in Bill C-126. This legislation, which will commonly be known as the Labour Code, sets up minimum standards governing certain conditions of employment, namely, hours of work, wages, vacation and general holidays. Legislation of this type is not novel and has existed for many years in the various provinces and elsewhere. Its introduction in the federal field represents a progressive step in the interests of the working people of this country and in the advancement of our social legislation.

We consider it necessary that there should be established standard hours of work, both daily and weekly, with limitations on overtime, so that irresponsible employers will not be permitted to engage in excessive exploitation of their work force, and workers will have reasonable opportunities for rest, relaxation and normal family life. The 8-hour day and 5-day week are now so extensively in effect in Canada that the bill will serve the useful purpose of bringing within its confines those employers who have failed to apply these standards. It is worth noting moreover that Part I of the bill provides for flexibility as to the arrangement of the hours of work in those industries where a fixed number of hours per day or per week is not practicable because of seasonal and other factors. The requirement of overtime rate of pay for hours worked in excess of those established as a standard should serve as a deterrent against abuse and confine overtime to what is actually necessary and unavoidable. Flexibility has also been allowed with regard to the provision of at least

one full day of rest in the week. The proposed legislation therefore has faced up to the realities of industrial line even while recognizing the need for a public policy as to maximum hours of work.

With respect to minimum wages, we consider the establishment of a minimum wage as an essential feature of any system of social legislation. The widespread existence of minimum wages legislation is ample recognition of this, although the minimum established in various parts of Canada is by no means satisfactory. It is worth noting that the ILO at its 48th session in 1964 adopted a Resolution concerning "Minimum Living Standards and Their Adjustment to the Level of Economic Growth". This Resolution, for which Canada voted, "emphasizes that adequate minimum standards of living should be ensured through the establishment of a dynamic minimum wage level." We believe, therefore, that you should support part II of the bill even though we are not satisfied that the minimum wage of \$1.25 an hour is in itself adequate and would favour the establishment of \$1.50 as a more adequate figure.

As for annual vacations and holidays with pay, there seems to be little need for arguments to justify this type of legislation. There had already existed a federal statute on vacations, the Annual Vacations Act, so that the principle was already well established. Parts III and IV of the bill thus merely write into the law conditions of employment which are already widely recognized and which will thus become available to those who have not had the benefit of collective bargaining or who for other reasons have enjoyed standards lower than those to be provided under this bill. We are sure you recognize the need for paid vacations and holidays and the widespread recognition of the desirability of leisure without loss of income as part of a good standard of living.

We would be less than honest if we were to say to you that we consider the bill satisfactory in all its aspects. This is not the case. We have endorsed it and ask you to support it because we consider that, in principle, it is important that this bill should be enacted. But we regret, for example, that the Government, in proposing this legislation, should have seen fit to exclude the Yukon and the Northwest Territories from its jurisdiction. We are also bound to be concerned about the possible effect of the special and transitional provisions contained in sections 51 to 53 inclusive. If the minimum standards with regard to hours of work and wages are to become a reality, the power to defer or suspend must be kept to an absolute minimum and only where justification is clear and beyond dispute. It remains to be seen whether and to what extent these transitional provisions will be used and we are apprehensive about the effect of including Sections 51 to 53 in the bill.

In conclusion, we wish to state that the advantages to be gained from such legislation outweigh criticisms of detail which might be made by ourselves or by others. It is the kind of legislation which we think is appropriate for the Parliament of Canada to enact within its jurisdiction and will be to the advantage of those wage and salary earners who have failed to benefit from the improvements in working conditions which others have enjoyed.

The CHAIRMAN: Any questions?

Senator THORVALDSON: Mr. Morris, I notice your brief is dated March 9, 1965, so it was very recently prepared. I was wondering if you had before you the brief that was presented to this Committee by the shipping interests a few days ago, and just what you have to say as to their problems? I am sure you are aware of the conditions of labour in that industry, which differ greatly from many other industries. Would you care to comment on their problem?

Mr. MORRIS: I do not think we had a copy of the brief.

Mr. ANDRAS: I received a copy of the submission in the appendix to your proceedings only yesterday afternoon, Mr. Senator, and could not give it any detailed study.

Senator THORVALDSON: I would ask the same question in regard to the trucking industry that is under federal jurisdiction. I was wondering if your brief had been prepared in the light of the problems which they indicated to this committee?

Mr. ANDRAS: We did not have the advantage of seeing those briefs in advance of our own statement. Our statement may be dated March 9, but this is merely a convention, but we were not favoured with copies of these presentations. I believe we have a general knowledge from our experience of the industry of the kind of representations that would be made, but we have not had an opportunity to examine their briefs in detail.

Senator ROEBUCK: And I suppose you did not see the brief submitted by the railroad management late last week?

Mr. ANDRAS: To your own committee, Senator?

Senator ROEBUCK: Yes.

Mr. ANDRAS: No, sir.

The CHAIRMAN: That only became available yesterday in print, as a matter of fact, yesterday afternoon, Senator Roebuck.

Senator ROEBUCK: Yes, but the brief itself was available. I got one, but there were not enough copies.

The CHAIRMAN: Any other questions of Mr. Morris?

Senator LAMBERT: It occurred to me, Mr. Chairman, that a little more definiteness could have been given in connection with such phrases as "a majority of the organized workers." Could you be a little more specific and give the exact numbers?

Mr. MORRIS: We represent 1,180,000 workers in this country.

Senator LAMBERT: But you say the majority.

Mr. MORRIS: That is by far the greatest majority.

Senator LAMBERT: What is meant by majority?

Mr. MORRIS: I would say organized workers would probably represent, in the federal field of the legislation to be concerned with, 55 per cent—well over half.

Senator LAMBERT: You figure 550,000 people would be affected by this?

Mr. MORRIS: No. I was talking about the total organized work force. Of the people we represent and are affiliated with, we estimate, about 55 per cent will be covered by the legislation.

Senator LAMBERT: Not all federal employees?

Mr. MORRIS: No.

Senator PEARSON: This brief states that the Canadian Labour Congress, represented by Mr. Morris, agrees in principle with the bill. I was wondering if there are any exceptions to the bill with which you do not agree.

Mr. MORRIS: Well, our position, as stated in the brief, is that we support the bill in its present form. We think it should be enacted by the Parliament of Canada.

Senator PEARSON: With no exceptions at all?

Mr. MORRIS: The exceptions we would have, we feel, are not such that we should criticize the bill in its present form.

Senator ISNOR: Mr. Morris, would you be good enough to enlarge on your objections to sections 51 to 53, which give certain companies an opportunity to present their cases?

Mr. MORRIS: As we said, sections 51 to 53 contain two separate provisions for delaying the implementation, one in which it refers to the right of the minister to delay, I believe for a period not to exceed 18 months, and then it contains a further provision, in one of the other sections, which would allow the Governor in Council to give a further deferment. We believe there should be a limit to the amount of deferment that could be granted in extension of the deferment granted by the Minister of Labour. And there does not seem to be a limitation on the amount of the further extension that could be granted by the Governor in Council.

Senator ISNOR: That is the understanding we all had of the sections, but what I had in mind particularly in asking you as to why you object to giving certain companies the opportunity, is the feeling that this might be a restriction on their enterprise to appear and present their case.

Mr. MORRIS: We do not object in principle to the idea of easing the implementation of the legislation by setting up a transitional period or giving an extension beyond the fixed date of legislation, but we do object to the principle which makes it possible for extensions to be continued indefinitely. We feel there should be a limitation to the terms in which all enterprises coming under the legislation should be required to conform to the legislation.

Senator ISNOR: Well, I thought there was a limitation—in the first case, 18 months, and in the second it was a question for the minister.

Mr. MORRIS: Yes, but there is no limitation in the second extension that could be granted, in effect, by the cabinet, because this is granted by discretion. We feel there ought to be a limitation to the period for which discretion should be exercised.

Senator ROEBUCK: Mr. Morris, on page 2 of your brief, in the second paragraph, you say the minimum established in various parts of Canada is by no means satisfactory. Wouldn't it be useful to put on the record what those minimums are in the various parts of Canada? Have you got that handy?

Mr. ANDRAS: Senator, these are published regularly in the *Labour Gazette* and in the annual report by the Department of Labour. We did not put them in because they are a matter, ordinarily, of public knowledge. We could have incorporated them, but it would have been surplus paper on our brief. If you wish, I could read off some of the figures to you.

Senator ROEBUCK: I think it would be useful information to have in our record, if you would just give it as briefly and concisely as you can.

The CHAIRMAN: These will be the provincial minimum wages?

Mr. ANDRAS: I have in my hand, Mr. Chairman and senators, a publication entitled *Provincial Labour Standards*, dated December, 1963, but my copy is somewhat more up-to-date, as it includes 1964.

Senator ISNOR: As published by whom?

Mr. ANDRAS: The legislation branch of the Department of Labour. You heard the lady in charge of this branch, Miss Lorentsen, a couple of days ago, and she is a very competent public servant.

In addition to that, the most recent issue of *The Labour Gazette*, dated January 29 of this year, contained some more current information on minimum wages.

If you will just bear with me, I was reading it last night, but it is just a question of finding the page. I suppose the best thing is to look up the table of contents, which is a much too sensible procedure. The table I have before me, then, is as up-dated as we can get it.

In Newfoundland there is a 50-cent minimum wage for women and 70 cents for men. This is in factories, shops and offices, and the same rates apply for hotels and restaurants.

In Prince Edward Island we have a 95-cent rate and \$1, as of May 1, 1964, for men only. This covers factories, shops and offices; and for hotels and restaurants, for men only, Charlottetown and Summerside and a five-mile radius around them.

There are other rates, but if you do not mind I will not clutter up the record with undue detail.

The CHAIRMAN: These are the highest minimum rates in P.E.I.?

Mr. ANDRAS: That would be \$1, that is right.

Then there are some weekly rates for waitresses and other female workers in Charlottetown and Summerside, which are, of course, the two principal urban communities on the Island.

In Nova Scotia the rates have just been changed by a new order, and I am sorry to say I did not bring it along with me. I think the rate is 85 cents in zone 1-A—and I am speaking from memory now.

Senator SMITH (*Queens-Shelburne*): One dollar and five cents for men.

Mr. ANDRAS: Yes, that is the principle urban community zone. Zone 1-B is slightly lower. Then you have zones 2 and 3, which are small villages and rural communities, and they have lower rates.

New Brunswick shows a rate of 60 cents, and their new rates were to have been established as of January 1 of this year.

Senator BURCHILL: In New Brunswick the minimum is \$1.05.

Mr. ANDRAS: You are quite right, senator. I will correct my statement. I read from *The Labour Gazette* of January 29 last, page 56:

The New Brunswick Minimum Wage Board has issued five new minimum wage orders, effective from January 1, 1965, that are the equivalent of a general minimum wage order, since together they cover all industries in the province except agriculture and fishing. They apply to both male and female workers. Under earlier orders, now replaced, general coverage was provided for female employees; but with regard to male workers, only those engaged in certain industries (logging and sawmills, the garment industry, and the canning or processing of fish, vegetables or fruits) were subject to a minimum wage.

The coverage of the orders and minimum rates set are as follows:

Order No. 1—Construction, Mining and Primary Transportation—\$1.05 an hour;

Order No. 2—Logging and Forest Operations, Sawmills and Related Enterprises—\$1.05 an hour;

Order No. 3—Wholesale and Retail Trade, and Manufacturing—75 cents an hour, January 1, 1965; 80 cents an hour, July 1, 1965;

Order No. 4—Food Processing—75 cents an hour, January 1, 1965; 80 cents an hour, July 1, 1965;

Order No. 5—Service Industries—65 cents an hour, January 1, 1965; 70 cents an hour, July 1, 1965.

The Quebec rates I have here are for 1963 and show zone 1, 70 cents, and 64 cents in zone 2.

Ontario has had a new set of rates, which are due to go up. The Ontario rates I have are \$1 and they are due to go up to \$1.25. They are going up on a graduated scale. If the committee wishes, we will submit a written statement as to the precise rates. We have not got them with us.

Senator ROEBUCK: Yes, I would like you to do that.

Mr. ANDRAS: Very well.

Senator LAMBERT: Yes, put it on the record.

Mr. ANDRAS: We will submit it to the clerk of the committee.

Senator BROOKS: For all provinces.

Mr. ANDRAS: Yes, if you wish, and that will save your time here. We will give an up-to-date breakdown of minimum wages.

The CHAIRMAN: You might still tell us about Manitoba, Saskatchewan, Alberta and British Columbia.

Mr. ANDRAS: Manitoba 75 cents and 70 cents.

Saskatchewan, on a weekly basis of \$36.50 and \$34.50, that is both urban and rural.

Alberta \$34 and \$30, large and small centres.

British Columbia is \$1 an hour.

The provinces vary as to whether it is on a weekly or hourly basis in establishing the minimum.

The CHAIRMAN: Thank you. Any questions?

Senator ROEBUCK: I think I am right in my assumption, am I not, that this bill proposes a higher rate than is to be found in any of the provinces, other than perhaps Ontario?

Mr. ANDRAS: In Ontario \$1.25 is limited to the so-called "golden horse-shoe," but the rate is moving up. \$1.25 would be the best rate in Canada.

The CHAIRMAN: Any other questions? If not, thank you very much Mr. Morris and Mr. Andras.

The next group to be heard is the Air Transport Association of Canada. Mr. Angus C. Morrison, the Executive Director, is going to present the brief. He has with him Mr. G. E. Manning, Director, Industrial Relations, Canadian Pacific Airlines; Mr. A. R. Eddie, Superintendent, Industrial Relations, Pacific Western Airlines, and Mr. G. E. Bolton, Director, Personnel and Industrial Relations, Air Canada.

Will you proceed, Mr. Morrison?

Mr. Angus C. Morrison, Executive Director, Air Transport Association of Canada: Mr. Chairman and honourable senators, on behalf of myself and my colleagues here present I would like to thank this committee for the opportunity to appear and make a submission on behalf of the Air Transport Association of Canada regarding the Federal Labour Standards Code Bill C-126.

The Air Transport Association of Canada is comprised of the major airlines, regional air carriers, non scheduled carriers, helicopter operators, specialty air services and flying training schools. All of these carriers are affected by some of the conditions of the proposed Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses.

Mr. Chairman, it may appear to yourself and to the other honourable senators present that it is somewhat incongruous that the airline industry would be making representations regarding a bill which, in fact, will in most instances only confirm the practice which has been in existence for many years in our member companies. Generally speaking, the majority of our employees already enjoy:

1. A 40 hour work week.
2. A minimum wage in excess of \$1.25 per hour.
3. Two weeks annual vacation after one year's service, and
4. Eight general holidays.

However, there are two areas in which the bill would create severe problems for the airline industry.

The first of these problem areas has to do with our flight crews, which have historically enjoyed working conditions based upon an entirely different concept of work than is normally accepted by industry. The 40 hour work week concept is entirely inapplicable to this group. Flight crew working conditions are based on 85 hours per month. This is 255 flying hours per quarter year and only 1,020 flying hours per calendar year—approximately one half of the working hours associated with the standard 40 hour a week personnel (2,080 hours per year).

This flight time limitation concept is established in Canada by federal regulation under the Aeronautics Act and I wish to file as an exhibit for the committee Department of Transport Circular 0/19/61 which sets forth the regulations governing the Canadian airline industry. It will be noted that the regulations establish hours in excess of those normally practised within the air transport industry. These regulations have been established to avoid air crew fatigue and to assure air safety and certainly already meet one of the broad intents of the bill, which is to establish minimum labour conditions. The actual flying hours achieved by any flight crew member, however, is significantly below 1,020 hours per year and more normally approximates 75 hours per month. This is due to the fact that several provisions exist to reduce the availability of flight crews, as well as vacation and sick leave time, which reduces flight time availability by 2 hours and 48 minutes each day the flight crew member is on vacation or sick leave. Flight time is further reduced by what have been called "duty rigs". These duty rigs provide items such as the following:

1. Flight time credited on the basis of the scheduled flight time or the actual flight time, whichever is greater.
2. Minimum flight time credited on the basis of a minimum payment for each duty period. This normally approximates one hours pay for each two hours on duty.
3. Minimum flight time credit of one hour for each four hours away from home base.
4. Flight time credits while in class room training.
5. Flight time credits when removed from a flight, even when that flight is operated by a fellow flight crew member who requires a training flight.
6. Minimum guarantees of 60 hours per month on domestic operations and 65 or 70 hours per month on overseas operations. This means a flight crew member receives 70% to 82% of his possible earnings during a month regardless of the fact that he may not operate one trip during that month. In the case of regional carriers the minimum guarantee for any month whether worked or not may be equal to 100% of salary.

It is the opinion of the association members that flight crew scheduling and working conditions are irrevocably tied to flight time hours per month either by agreement or by Department of Transport Regulations. This factor and the fact that regulations already exist governing the working conditions of this group of employees under the Aeronautics Act it is submitted can only lead to the conclusion that flight crews should be exempted from the provisions of Bill C-126.

As a further indication that flight crews already enjoy conditions well in excess of those provided by the proposed Act, it should be noted that by collective bargaining agreement, flight crews are guaranteed 10 days free of

all duty each month. This compares with an average of $8\frac{1}{2}$ days off per month received by an employee working a 40 hour week. With the addition of general holidays, however, this latter figure will be increased to an average of $9\frac{1}{2}$ days off per month.

These guaranteed 10 days off per month are not the only days off that flight crew receive. I would like to submit as an exhibit a sample of DC8 captain overseas blocks in Canadian Pacific Airlines Ltd. and schedules for Pacific Western Airlines flight attendants during a peak month. These schedules show that on an average a flight crew member on such operations receives 13 to 17 days off each month at his domicile and an additional 4 to 5 days off each month away from domicile.

Senator McCUTCHEON: Does he work?

The CHAIRMAN: Is that included in your average of 10 days off duty each month, or is this in addition to that?

Mr. G. E. Manning, Director, Industrial Relations, Canadian Pacific Airlines: The 10 days are included in these 13 to 17 at home base.

Mr. MORRISON: Because of the nature of their function, therefore, and because of the peculiar method of scheduling these personnel, no direct reference has been established between the working conditions of flight crew and other personnel in the airline.

Other personnel in the airline, as we mentioned at the beginning of this report, have for many years enjoyed a 40 hour week, time and a half and double time overtime provisions and 8 general holidays. These conditions, however, were not considered related to the flight crew method of scheduling and accordingly have never been a major considering factor during negotiations with this group. However, the flight crew groups, particularly the pilots who set the pattern for the rest of the flight crew personnel, are recognized as a particularly strong union, and that if, in their opinion there had been a right previously established to general holidays under the hours of service provisions which govern their employment, they would have long since achieved parity with the rest of the airline employees. The employees themselves, although represented by very aggressive unions, have not pressed this point very strenuously. There would, in our opinion, be no question of discriminating against flight crews, as their work schedules are so different from those of ground employees as to make any comparison impossible.

I should perhaps state that the minimum wage in this group is considerably in excess of \$1.25 per hour, and that this group of employees—in fact all employees in the airline industry—are entitled to 2 weeks vacation with pay after one year's service, 3 weeks vacation with pay after 10 to 12 years' service, and in the case of Air Canada 4 weeks vacation with pay after 20 to 25 years' service.

It is, therefore, respectfully submitted that; because the nature of the flight crew working conditions and hours of service are entirely unrelated to the 40 hour week concept; and because this group enjoys working conditions considerably in excess of those proposed in Bill C-126; and because federal legislation under the Civil Aeronautics Act, that is, Department of Transport regulations covered in Circular 0/19/61 already establish the hours of service provision for flight crew personnel; flight crew personnel be exempted from the provisions of Bill C-126.

The second point we wish to raise today, Mr. Chairman and Honourable Senators, has to do with the restriction on overtime as covered in Part I.

Airlines, like all forms of transportation, operate round the clock with fluctuating schedules and varying work loads, depending upon the immediate demands of the public, traffic and weather conditions.

The airlines are a public service industry, they operate 24 hours a day, 365 days a year for the convenience and necessity of the travelling and shipping public and the postal services. Their only product is air transportation and it must be simultaneously produced, sold and consumed, otherwise it is lost. We must be able to respond immediately to a variety of demands in a safe and efficient manner. Flight schedules and terminal and ground support facilities must be geared to travel fluctuations, on a round the clock basis, on weekends and holidays. To meet daily and seasonal peaks and operational emergencies, we have traditionally negotiated flexibility into our labour agreements, such as special premium pay for overtime, special provisions for relief assignments, rotation of work schedules and days off, special provisions for combining long and short work weeks and other specialized work scheduling arrangements. Our ground employees receive overtime pay after 8 hours per day and for work on their days off.

If Bill C-126 is enacted the airlines could be required to adhere to strict maximum hour provisions of the law without the benefit of these negotiated operational flexibilities. The result is that individual companies and the unions will have to sit down and try to re-arrange and re-write existing contract provisions to accommodate a federal overtime law which does not recognize the operational requirements of air transportation. The airlines will continue to attempt to avoid overtime work whenever possible. This is a simple matter of sound management practice. However, the airlines see no realistic substitute for the necessity to require employees to work overtime to meet the convenience of the public.

I might state at this stage, Mr. Chairman, that one of the major problems we face is the determination of what is an emergency. The other day in *Hansard* (page 11496) the Minister of Labour is quoted as stating that an emergency involved inoperative equipment. Not only would inoperative equipment be an emergency in the airline industry, but weather conditions delaying or cancelling a flight, the necessity to operate for the public convenience and operate all flights as close to schedule as possible would create an emergency and in addition, just the plain necessity to have an airplane serviced or overhauled on the due date in order to serve the travelling public, who have made reservations and plans on the basis that the airline will be providing carriage, would also be classed by our industry as emergencies. We are somewhat fearful that the restricted interpretation of the provisions of this section will severely restrict our ability to meet our public obligation. We would, therefore, request that consideration be given to exempting the airline industry from this overtime restriction.

It may be of interest to the committee to note that when the Fair Labour Standards Act was amended in the United States, the House General Subcommittee on Labour found it necessary to exempt the airlines from the overtime provisions.

We believe that in the best interest of allowing the bill to proceed, the interests of the industry can be best served by applying the exemptions permitted under section 3, paragraph 3, sub-section b dealing with non-application to certain employees, and in this regard we would like to see flight crews exempted.

Mr. Chairman, that is our submission. I have already introduced my colleagues and I believe they are in a position to answer any questions.

Senator LAMBERT: I notice on page 6 there is a reference to ground employees, and I wonder if they are in a different category from the flight crews to whom you refer specifically here. Are they in a separate category of their own?

Mr. MORRISON: Yes.

Senator LAMBERT: Are they described as "ground" crews?

Mr. MORRISON: Ground personnel, of which there are many categories.

Senator LAMBERT: What about the bill as applied to them?

Mr. MORRISON: We see no problem.

Mr. MANNING: With the exception of the points regarding limitation of hours of duty.

Senator THORVALDSON: What about the case where you are short of aircraft and you require ground crews to work overtime to prepare aircraft. Is this not a problem?

Mr. MANNING: That is definitely a problem.

The CHAIRMAN: Senator Burchill.

Senator BURCHILL: How does the Fair Labour Standards Act in the United States deal with air crew?

Mr. MORRISON: They are exempted.

Senator McCUTCHEON: Would any of your employees be adversely affected, either air crew or ground crew, if air transport as such were completely exempted?

Mr. MORRISON: I don't think so.

Senator BURCHILL: Your ground crews and air crews have no objection to the conditions under which they are working today?

Mr. MORRISON: No.

Senator BOUFFARD: Just the government has come in to suggest new arrangements.

The CHAIRMAN: The committee is aware of the provisions of section 4 by now. That would appear to preserve the position of the flight crews. I think in the recital by Mr. Morrison it would appear that the benefit from any contract— custom, contract or arrangement which they have is more favourable than the rights and benefits they might get under this act. In those circumstances it might well be that the flight crews are not, therefore, subject to the provisions of this bill. However, there is one interesting point I would like to mention. Under the Aeronautics Act referred to you have authority given to the Air Transport Board under section 13 of that statute which says

Subject to the approval of the Governor in Council, the Board may make regulations:

and under sub-paragraph

(1) prescribing maximum hours and other working conditions for pilots and co-pilots employed by any air carrier;

That raises the question, then, of conflicts between the Civil Aeronautics Act and this particular bill, and frankly at the moment I would not rush into expressing an opinion.

Senator ROEBUCK: Wouldn't the specific legislation override the general?

The CHAIRMAN: But the specific legislation, the Civil Aeronautics Act, antedates considerably the Civil Labour Code. I wonder what effect it would have. We must assume that Parliament in preparing the standard labour code is perfectly well aware and has taken into consideration the provisions of the Aeronautics Act.

Senator McCUTCHEON: That is a pretty rash assumption.

The CHAIRMAN: I was saying as a matter of law we must assume.

Senator ROEBUCK: In the interpretation of statutes the fact that one was passed prior to the other is never considered an overruling consideration.

The CHAIRMAN: I would rather feel that section 4 of the bill is to be considered rather than the Aeronautics Act. However that is a comment I throw out.

Senator THORVALDSON: I suggest it is a question whether section 4 applies; it is still a matter of law and would have to be debated.

Senator SMITH (*Queens-Shelburne*): In the case of air crews working away below the minimum number of hours, even on a daily or weekly basis, but certainly on a yearly basis, we know they are getting far in excess of the \$1.25 minimum required; and if so, why are you worried about them?

Mr. MANNING: In the other place, on the floor, when they mentioned it was according to the work flight, it was pointed out that these flight crews report for the work flights. They are available, but they do not get paid, and the limit on the 85-hour does not start until they start flying. Therefore, under this bill, we could have them working but not receiving any pay under the present conditions. By their agreement and the restriction under DAT regulations we would be having them paid and restricted on their flying hours.

Senator CROLL: But even then, you would pay far more than they have now, if you take into account that they are not paid when coming to and from work, and even under that you are far beyond this act?

Mr. MANNING: Yes.

Senator CROLL: Then what is the problem?

Mr. BOLTON: In regard to statutory holidays, we believe it would be impossible to interpret the act. On a day in which he flies, he could earn \$200. If that happens to be a statutory holiday, the act would imply that he is entitled to one and a half times the normal rate of pay, so he would receive \$500 pay for that one day. This is not the purpose of the act. All we are saying is that for a flight crew it is almost impossible to administer working conditions under the act as constructed.

We have no objections to the act in relation to ground crew. We believe we could handle that. But we do not know how to do it for our flight crew people. The statutory holiday is only one of the problems. There are also the problems of duty hours, stand-by hours, lay-over hours, and so on. For every four hours on the ground they get a flight hour. We do not know what kind of hours you use to construct the problems which would be presented in the administration of the act.

Senator CROLL: You may have problems, but you would get a period of time in which to work out those problems. It may be one year or 18 months, or whatever the minister may think necessary. There are escape clauses in this. Surely it is possible to work it out.

Mr. BOLTON: We have been working with this very highly developed group association for a number of years, and they bargain very effectively. Up until this time we have not had a problem in this particular area to administer. We believe that they are adequately paid under their agreement. Immediately this act is held to cover flight crew, we would be caught between two storms. Under this act, if the statutory holiday is part of it, there is one storm—and the ordinary machinery process is another. We believe that their working conditions are such that the people working as flight crew and the company management know the situation sufficiently well to give effect to the agreements. But if we are caught up in the conflict of interpretation under this act, we believe it would work an injustice on the air lines and create complications that we think would be unnecessary.

Senator BROOKS: These problems for Canada, would they not be the same problems as were found in the United States; and would that not be the reason they are exempted under the American Act?

Mr. MANNING: The 85-hour concept started in the United States in 1954.

The CHAIRMAN: The answer may well be that the flight crews enjoy such benefits under the law and under their agreements, that they have a complete "out" under section 4 of the bill.

Senator McCUTCHEON: That will not help the ground crews' overtime. The witness said, as regards ground employees, there was no problem working it out. The bill indicates, as regards overtime—

The CHAIRMAN: I am talking of the statement of the witness that, as far as ground crews are concerned, they can adjust themselves to the bill.

Senator LAMBERT: They are a different category.

Senator McCUTCHEON: But the flight crews cannot, as regards overtime.

Mr. MANNING: If this legislation is conceived as applying to flight crews, it is my opinion that we would have to change our whole method of payment for flight crews—if there is no exception, if we do have flight crews under the definition of this act, working and receiving no pay and receiving no hourly credit. In regard to this point which has been mentioned, we have a flight crew being paid and being given credit against total hours, while on the ground at Amsterdam or Rome or wherever the flight may be. But we have not any concept of a 40-hour week, and if we are required to do so, we will have to change the entire concept on which we have been working in the past.

Senator SMITH (*Queens-Shelburne*): Would the witness agree that in section 4 there is an "out" where the contract with the union provides better standards than are available?

Mr. MANNING: This is possibly quite correct, but the pilots want no statutory holiday and they figure this act is going to give them one, so there is a conflict created already.

Senator SMITH (*Queens-Shelburne*): Is it my understanding of the bill that there is provision for taking some other day in lieu of that holiday that might have to be worked by an air line employee, and that you would not necessarily have to pay that man for Dominion day, if he is in London or some other place, that you would choose some time when he was off work, and that would be his holiday. Is that not the situation?

Mr. BOLTON: The difficulty would be related to what a day's pay would be. It is a question of pay per day. If he flies eight hours in the day, that day gives him eight hours' pay. That eight hours pay depends on what equipment he flew, and that equipment is related to its speed, its weight, whether it is a day flight or a night flight. The whole wage system is related to an air hour, and an air hour is related to these various items or working conditions. We say it just does not apply to the normal ground worker who punches a clock or reports for work, and later on reports off work.

Senator SMITH (*Queens-Shelburne*): You are not talking about ground crews?

Mr. BOLTON: No. Flight crews.

Senator SMITH (*Queens-Shelburne*): You use the word "ground".

Mr. BOLTON: I said it is not the same as the ground people who work a 40-hour week, an eight-hour day, and so on. We say that the flight pay system is sufficiently difficult and complex. It is similar to that in the case of people operating railways. The whole basis is so different that it does not fit into the measures in this act.

Mr. MANNING: One of the reasons they offer, regarding statutory holidays or general holidays in this bill, when we had it in effect for at least 20 years in the air line industry, is that most of them do not want another day when they cannot perform any function. They want to be able to get 85 hours flying a month, and so maximize their earnings.

Mr. BOLTON: A block holding pilot under our contract has eight guaranteed days off. He is not permitted to fly on those eight guaranteed days. We at one time offered ten. They did not want that, because this would reduce the number of flights on which they could increase their earnings up to the maximum of 85 hours. In the case of the flight lieutenant group, we allowed them ten days clear off, believing that this compensated him, granting a day for the statutory holidays that related to the eight days and that fraction of the normal 40-hour week worker. We give them ten guaranteed days off every month. Now, granting this type of understanding in the agreement, we are faced with legislation which says eight guaranteed days off for this particular group, and we are compounding our problem.

The CHAIRMAN: But, Mr. Bolton, may I interject here? You are looking at this in relation to flight crews on the basis that the flight crews, for instance, could pick and choose and get the benefit of your agreement in this bill, and that in respect of things that the bill would give them that they have not under their agreement, they could claim those benefits. But have you looked at clause 4 of the bill? I do not know how you can separate them into parts.

Mr. BOLTON: But if you look in the agreement there is no provision for statutory holidays. Therefore, the legislation is better than what they have in the agreement.

Senator CROLL: It is not in detail.

The CHAIRMAN: Section 4 says:

...but nothing in this act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him . . .

Then he enjoys those and does not take the provisions of the bill.

Senator McCUTCHEON: What right has he got under this type of contract that is more favourable than getting eight statutory holidays?

The CHAIRMAN: He has the benefit of higher rates of pay, and regulations by law which stipulate hours of work which are more beneficial to him. If you examine the agreement against the bill I think you would have to come to the conclusion that the over all rates and benefits he enjoys by right rather than by contract are much more favourable.

Senator McCUTCHEON: Well, I think it is a matter about which there undoubtedly would be argument.

The CHAIRMAN: I am not saying that my view is absolute.

Senator McCUTCHEON: These people are in the position where we cut right through their agreement.

Senator THORVALDSON: I think the argument which you have just stated, Mr. Chairman, is a good one.

The CHAIRMAN: It may be a matter of law, the relationship between the Civil Aeronautics Act and this bill, and the position in which they are put. I do not know, I am not venturing any opinion at the moment.

Senator KINLEY: Is there any provision for averaging of hours?

The CHAIRMAN: There is in the bill.

Senator KINLEY: You can average the time until you are below the minimum?

Mr. EDDIE: You are speaking of ground staff, are you? As far as that is concerned, it depends on the bill. If we can average it over 12 consecutive months, that is fine. In this case, especially if it goes over from one year to the next, we can live with it. If we had an emergency in the last two weeks of December and could not carry it over to the next two weeks, possibly we could have a problem.

Mr. MANNING: There would be considerable difficulty in keeping our operation going in B.C.

The CHAIRMAN: Senator Thorvaldson?

Senator THORVALDSON: Mr. Chairman, for instance, in regard to ground crew, would there be any of their people generally receiving less than \$1.05 an hour in pay?

Mr. BOLTON: No.

Senator THORVALDSON: Do you know of any classification in the air transport industry receiving less than \$1.25 an hour. I am referring now to secretaries, stenographers, and so on.

Mr. EDDIE: Possibly an office boy—we may have two employees getting \$1.23, or thereabouts.

Senator BAIRD: Does that include both males and females?

Mr. EDDIE: There is no difference between the two.

Senator THORVALDSON: I would like to get an answer.

Mr. MANNING: The only others would be in-training personnel, such as stewardesses.

Senator THORVALDSON: But they are really students?

Mr. MANNING: Yes.

The CHAIRMAN: I should like to point this out to you, Senator Roebuck. On a careful reading of clause 4 it starts off by saying, "This act applies notwithstanding any other law," etc. and the only way of not applying them is if the benefits under a law are more favourable, then this act may not apply; but you have the answer in clause 4.

Senator POWER: I understand from the witnesses generally that though they contend that air crews cannot possibly be brought under the provisions of this bill, ground crews can?

The CHAIRMAN: Yes.

Senator POWER: One of them did so express himself.

The CHAIRMAN: Yes: He said one sticky point would be the matter of overtime in relation to ground crews.

Any other questions? Thank you Mr. Morrison.

The CHAIRMAN: The next group we are proposing to hear is the Grain Elevator Operators, represented by Mr. Cecil Lamont, President, North-West Line Elevators Association, who is to my right. Sitting immediately next to him is Mr. W. J. Parker, President, Manitoba Wheat Pool, and representing also the Saskatchewan and Alberta wheat pools; Mr. George H. Sellers, President of Federal Grain Company and President of Alberta Pacific Grain Company, and Mr. A. M. Runciman, President, United Grain Company. I understand that Mr. Lamont is going to present the first brief.

Mr. Cecil Lamont, President, North-West Line Elevator Association: Mr. Chairman and senators, this brief is presented on behalf of the North-West Line Elevator Association. Mr. W. J. Parker, President of the Manitoba Wheat Pool, will speak on behalf of the pool; and Mr. Runciman will speak on behalf of the United Grain Growers Limited.

Our brief reads:

1. INTRODUCTION:

The North-West Line Elevators Association represents the investor-owned section of the grain handling industry in Western Canada. The membership of the Association is made up of the following companies:

Searle Grain Company Limited
 Pioneer Grain Company, Limited
 Federal Grain Limited
 Alberta Pacific Grain Limited
 National Grain Company, Limited
 N. M. Paterson & Sons, Limited
 McCabe Grain Company, Limited
 Parrish & Heimbecker, Limited
 Inter-Ocean Grain Company, Limited
 Ellison Milling & Elevator Company, Limited
 Scottish Co-operative Wholesale Society Limited
 Robin Hood Flour Mills, Limited
 The Quaker Oats Company of Canada, Limited

Senator PEARSON: Are there any other companies not represented here?

Mr. LAMONT: These are all what are known as the privately owned companies. Mr. Parker is representing the pools, and Mr. Runciman is representing the United Grain Growers, which is the entire grain handling elevator system of western Canada.

Senator THORVALDSON: But we should make it clear that Mr. Runciman and Mr. Parker do not represent organizations that are part of the North-West Line Elevators Association.

Mr. LAMONT: They are going to be speaking for their own organizations.

The CHAIRMAN: They are going to make their own submissions.

Senator THORVALDSON: Yes.

Mr. LAMONT: The Association appreciates the opportunity of presenting the views of its Member Companies to your Committee on what we believe to be the problems involved in the proposed Labour Bill.

Our Member Companies operate a total of 2,270 country elevators located throughout the Prairie Provinces. We are therefore vitally concerned in any proposed legislation which will affect the efficient operation of these elevators in serving the grain producers of Western Canada.

2. THE NATURE OF THE WORK PERFORMED BY COUNTRY ELEVATOR AGENTS:

The country elevator operator is very much of an entrepreneur in his primary employment with a grain handling organization and in other activities he carries on in the community. The first duty of a country elevator operator is to secure customers. He then receives, grades, assesses dockage, buys, stores and loads the grain into box cars for shipment. The operator

must maintain proper records which are demanding and detailed. For each load of grain received, the operator must issue a cash or storage ticket setting forth the grade, dockage, and weight of grain received. The task of grading and assessing dockage on every bushel of grain taken into the elevator is not an easy one. There are some 7,000 different grades of grain which may be delivered to an elevator, and with each delivery the operator must grade and weigh the grain accurately and assess dockage (weed seeds, chaff, dirt, etc.).

The operator must so arrange his bin space as to make the best possible use of the storage space available in the elevator for various types and grades of grain. In shipping out wheat, oats and barley, he must do so in strict accordance with instructions issued from time to time by the Canadian Wheat Board, and by his company for the non-Board grains, flax, rye and rapeseed. The operator must use his judgment in ordering railway box cars in order to make space available in his elevator for new business. He must also promptly load cars spotted at his elevator in order to avoid demurrage charges, and he must exercise judgment in loading the proper grade of grain into the box car.

Under regulations promulgated by the Canadian Wheat Board, the elevator operator, in accepting deliveries of grain from the producer, must strictly adhere to quotas imposed by the Board. Should he accept grain into the elevator in excess of the quota in effect from time to time, he is personally liable to a fine or imprisonment, or both. The operator has signing authority on behalf of his company and the grain tickets which he issues on his sole authority, are the equivalent of a cheque and may be cashed anywhere. In remote areas where there is no bank or store, he may also act as paying agent with money on hand to cash the grain tickets which he issues. It should also be noted that the signature of the operator alone makes a grain ticket valid, while two signatures are required on cheques issued in the head and branch offices of the grain company.

In exercising what we believe to be "management functions" the operator is left to his own resources in making the best use of his time. It should be emphasized that the actual management of the elevator is in the hands of the local operator. The elevator operator is the sole representative of, and spokesman for his company in his area. The good name of the company is entrusted to the operator in his area and upon his capabilities rests the ability of the company to secure business at the local point. He is in charge of a plant worth from \$60,000 to \$100,000 and of grain stocks which, when the elevator is full, are worth up to \$500,000. The grain companies use great care in selecting their elevator agents as each man plays an important role in the life of the community. The integrity of the man must be beyond question. The Board of Grain Commissioners and the company require that the operator must be bonded, and his reputation and operating record must be such that he can secure and retain a licence from the Board of Grain Commissioners. He is at all times subject to the provisions of the Canada Grain Act and of the regulations promulgated under the Act by that Board.

The statutory duties imposed upon every elevator operator are of considerable importance. The licensed operator of the local elevator is solely responsible, both under his bond and to the Board of Grain Commissioners, for the custody of grain taken into the elevator and for the correct weighing of grain accepted from the producer. Should the operator have an overage in excess of $\frac{1}{4}$ of 1%, he is subject to being called before the Board of Grain Commissioners and having his licence cancelled unless there is a satisfactory explanation. For this reason it may be seen that it is impractical to operate an elevator in shifts. To do so would be analogous to operating a bank in shifts

without counting the cash between shifts. Where it is possible to make the actual count of cash in a bank, it would be impossible to make an accurate estimate of the quantity and grades of grain in a country elevator each time an operator was relieved of his daily duties to change shifts.

The climate of western Canada makes the work of an agent seasonal in nature. At many times during the year conditions on the prairies are not conducive to the delivery of grain; at other times the farmer is fully engaged in other farm duties; the elevator may be full of grain with no box cars available for shipment out; grain in the area may all be delivered. During inclement harvest weather, the agent must make himself available to conduct moisture tests on behalf of the producer in order that the farmer may determine whether or not his grain is in condition to thresh without being penalized as tough or damp grade. It will therefore be seen that the hours of work required of an operator are subject to wide fluctuation. The local operator must use his good judgment in deciding what hours the elevator is to remain open, subject, of course, to Section 109 (1) of the Canada Grain Act which reads:

Except as provided in Section 108, the operator or manager of every licensed public country elevator shall, at all reasonable hours on each day upon which the elevator is open, receive all grain offered thereat for storage without discrimination and in the order in which it is offered, provided that there is in the elevator available storage accommodation for grain of the variety and grade of such grain and of the character desired by the person by whom the grain is offered.

The CHAIRMAN: Are there regulations under that section specifying what are the reasonable hours in which he must receive grain?

Mr. LAMONT: No, there are no hours specified.

In all of these circumstances the operator exercises management function in determining whether to be available in the elevator office or to occupy himself elsewhere.

For those not familiar with life in prairie towns and villages, it should be pointed out that the elevator operator, at various periods of the year, has little call for his services at the elevator. During these periods he may or may not be at the elevator. Most towns are small and intimate enough that the farmer will have little trouble locating the operator either at home, at the curling ring, or elsewhere in the town. The habits of the operator are well known to the farmers and he can be found on short notice, but not necessarily at his place of work.

As may be seen, the work of the agent requires a man of a good deal of ability. With the improvements that are taking place in agriculture today, it is becoming increasingly important for an agent to keep up with the latest methods of farming. The operator is not only a businessman, but an advisor to his farmer customers. He must be capable of advising his customers concerning new developments in farming practice and particularly in the use of farm chemicals and fertilizers.

It is interesting to note what others have said of the qualities required for a good agent. In his book, "The Canadian Grain Trade", page 112, D. A. MacGibbon, M.A., Ph.D., a member of the Board of Grain Commissioners for Canada for many years, and a member of the Turgeon Royal Grain Inquiry Commission, 1923-24, said of the country elevator operator:

He must have a sound knowledge of grain, sufficient education to calculate dockage, to weigh accurately, and to make out the records, and a fair amount of managerial ability. His main problem is to keep his house always in a position to receive and handle grain of all kinds.

When the rush of shipments is at its height in the fall he must not let the elevator become clogged. This involves alertness and activity in obtaining cars and shipping out grain, as well as judgment in using the bins that are at his disposal.

The skill in grain buying is not the only talent possessed by most country elevator operators today. Because of the seasonal nature of the business, grain buyers find they have, at various times of the year, a great deal of time on their hands. The work-load at the country elevator at any particular time is unpredictable because of climatic conditions, desire of the farmer to deliver, road conditions, box car supply, export demand for various grain, terminal congestion and lake and ocean movement of grain—just to cite a few of the many factors involved.

The 5,000 country elevator operators naturally vary in their ambitions and desires to add to their income. A very large number of them find that the nature of their employment makes it possible for them to use their free time to take on additional work, and this has been the custom over the years. In addition to their primary employment, many act as agents for insurance in all its forms; they act as agents for oil companies; they act as agents for the sale, on a commercial basis, of flour, coal, chemicals, fertilizers, twine, farm supplies and farm machinery. As a result of these other occupational pursuits, a considerable portion of the outside earnings of operators comes to them on a commission basis, and many elevator operators in their work with grain companies are remunerated on the basis of a basic salary plus a bonus on volume of grain handled. Others have interested themselves in politics and have become members of Parliament and of the Senate. A great many are leaders in their community and occupy seats on the local municipal bodies. Some engage in farming on their own account.

Far from encroaching upon the services offered to farmers, the granting of permission to elevator operators to engage in outside activities has allowed the elevator companies to recruit into their employment, men of superior ability and intelligence. It will thus be seen that it is ludicrous for legislation to be imposed upon this class of individual who because of the nature of his primary employment has every opportunity and desire for taking on additional work to supplement his income.

3. THE PROBLEM

Grain handling companies were greatly concerned when they learned of the provisions of Bill C.-126. It should be clearly understood that our member companies were not concerned with the provisions of the act dealing with minimum wages, annual vacations and general holidays. The standards in the industry covering these matters are well above the benefits called for under this legislation. However, the provisions of the Bill covering hours of work are completely unrealistic from the viewpoint of operating country elevators throughout western Canada. We believe we have made clear that the work of a country agent is essential to his farmer-customers, and although he may work ten to twelve hours during short periods of the year, there are other times when he is almost entirely free of duties. This is not an occupation which is suited to the punching of a time clock. This is not an occupation which is conducive to regulation of hours of work to so many hours each day. With no continuous supervision, the only time-keeper would be the agent himself. The elevator operator is in effect a servant of his farmer-customers, and he must adapt himself to the needs of these customers. No one has suggested that hours of work for farmers across western Canada should be limited, and it is equally unrealistic to ask that the men who service the needs of farmers regulate

their hours into neat, convenient packages of eight hours per day unrelated to customer requirements. On many occasions throughout the year, there is no need for the agent to be at the elevator more than one or two hours per day. To have him sit idly in a country elevator for eight hours per day throughout the year would be wasteful. However, to impose upon this same elevator operator a restriction of eight hours of work during a time when his farmer-customers are hauling grain to market, would also be wasteful and inefficient. It may well be the case that an elevator operator works ten to twelve hours a day during these times, but he does so with full knowledge that his work is essential, and the time will soon come when he will have a period of time when business is slack.

The provisions covering hours of work which are included in Part I of Bill C.-126 are, we submit, unrealistic and if imposed on the operations of country elevator agents would lead to serious inefficiencies in the grain handling business. Let us cite an example of such inefficiency. Railway cars are often spotted at elevator points throughout western Canada to be loaded by the elevator agent. The train will often move back down the line on the following day to pick up cars that have been loaded. Under the provisions of the Canada Grain Act, it is incumbent upon the agent to attend to the loading of the cars. Section 71 of the Canada Grain Act reads in part:

- (1) Every person who receives notice of the placing of a car pursuant to any application shall, within three hours thereafter, give notice to the railway agent of his ability and intention to load such car.
- (2) The loading of every car placed pursuant to an application shall be commenced within twenty-four hours after the giving of notice of ability and intention to load the same, and such loading shall, in the months of September, October and November in each year, be completed within twenty-four hours, and at any other time within forty-eight hours, after the giving of such notice.
- (3) Where, after any car has been placed in accordance with any application, notice of ability and intention to load the same has not been given, or the loading thereof has not commenced within the times hereinbefore limited, the application shall be cancelled and shall be marked accordingly with the date of the cancellation and the initials of the railway agent.

The elevator agent under such stress, must work long hours to get the cars ready in order that he may meet the schedule of the railways. If he is confined to the 48-hour work-week proposed in the bill, Canada's export movement of wheat must suffer. We need not tell a committee such as this, of the great value that the sale of huge quantities of grain has been to this country over the last two years. We submit that this tremendous movement of grain could not have been accomplished if our elevator operations had been hampered by limitation of the work-week to 48 hours when the movement was at its peak. The railways also would be forced into uneconomic operations by having box cars tied up for a longer period than is absolutely necessary.

We believe that at least in part, these difficulties have been realized. Officials of the Department of Labour have indicated that by using the averaging provisions of the Act, the difficulties of the trade can be overcome. We have no doubt that the ordinary elevator agent does not work over 2,000 hours in the year, but we know the great difficulties involved in having his hours recorded. As has been said previously the occupation of an elevator agent does not lend itself to punching a clock, or keeping track of the number of hours on the job. The typical elevator agent has more than one job, and he may have

many agency functions. The multiplicity of commission and agency functions carried on by the elevator operator makes the definition of hours served in his various capacities difficult if not impossible to allocate. Many of his extra-curricular functions are carried on at the elevator office. We therefore must report as unworkable the provisions for averaging.

The provisions of section 51 have also been brought to our attention and the possibility raised that the trade could gain up to 18 months exemption. It is apparent that section 51 was incorporated into the Bill for the provision of industries which would take an extended period of time to adjust to the restrictions of the bill. This section may be of assistance to such industries, but it must be realized that our difficulties would not be phased out over a period of months. The difficulties we would have, the inefficiencies which would be incorporated into our business if we were subjected to this legislation could not be made to disappear in 18 months. They would be as real and significant then as they are today. We require exemption from the bill. A postponement of the date will not meet our problem. Quite apart from the ineffectiveness of this limited "opting" out of the provisions of the bill, our member companies feel it is entirely unsatisfactory to be governed by regulations made under the bill, rather than to have the required relief in the substance of the bill. We are not looking for exemption by means of circuitous dealings. We seek to have the problems of the trade recognized and an exemption granted because application of the bill would cause inefficiencies and hardship to both employers and employees and to the farming community.

We submit that upon an analysis of the duties carried out by elevator agents, these people should qualify as individuals carrying out management functions. As such, elevator agents would be exempted under the bill, as section 3 (3) states the bill does not apply

"in respect of employees who are

(a) managers or superintendents or who exercise management functions,"

The difficulty in such a position comes from the sections of the Canada Grain Act, section 2, sub-section (17), which states:

'manager' when used with respect to an elevator, means the person in possession of the premises constituting such elevator, either as owner or lessee thereof or as being entitled under a contract with the owner or lessee to operate such elevator for his own benefit and advantage, but does not include a person in charge of an elevator who is remunerated for his services by commission;

and section 2, sub-section (20) states:

'operator', when used with respect to an elevator means any person appointed or authorized by the manager of such elevator to take charge of the operation thereof, or to represent him in connection with its operation;

These particular sections of the Canada Grain Act were inserted many years ago at a time when a great many of the country elevators operated in Western Canada were owned and operated as single units by individuals. However, even though this situation no longer exists today, the fact that these definitions remain in the Canada Grain Act will, we fear, raise difficulties in having elevator agents ruled as managers or individuals exercising managerial functions.

The CHAIRMAN: It occurs to me that in the event of any conflict here the Grain Act could be amended, or this act could provide for the exclusion of the definition of a manager in the Grain Act from application here. Or it may be that there is no necessity for saying that because somebody is described as a manager who performs certain functions under the Grain Act, that is the meaning to be attached to "manager" used in this bill. They may be two entirely different categories.

Mr. LAMONT: There has been considerable reluctance in recent years to bring the Canada Grain Act up for amendment. That might take longer than making the simple amendment we suggest in the next page.

The CHAIRMAN: It may be that you do not need the amendment. The manager under this bill may not be the same person as the manager under the Grain Act.

Senator LAMBERT: May I ask if individual elevator operators are subject to licencing?

Mr. LAMONT: Yes, by the Board of Grain Commissioners.

Senator LAMBERT: Their responsibility is complete and plenary there. Have the Canada Grain Commissioners any responsibility there?

Mr. LAMONT: The agent is employed by the company, and is bonded by the company which bond is also required by the Board of Grain Commissioners. He must have his licence from the commissioners.

Senator LAMBERT: The company will be responsible to the Board of Grain Commissioners in the same way as the agent is?

Mr. LAMONT: If the agent has excessive overage, that is in excess of one quarter of 1 per cent, he is subject to appearance before the Board of Grain Commissioners and having his licence cancelled by them and then he would no longer be able to work in the trade.

Senator LAMBERT: Is there any information you can give us about the average remuneration?

Senator THORVALDSON: Mr. Lamont is just about through with the brief. I wonder if we could let him finish and have the questions afterwards please.

The CHAIRMAN: Of course. I am sorry—I started that.

Mr. LAMONT: While on the facts of the situation there is no question that the elevator operator could be included in Clause 3 of Bill C-126, as one who does in fact "exercise managerial functions", this interpretation could always be subjected to attack in the Courts in face of the interpretative provisions of the Canada Grain Act.

We therefore feel that an amendment to Bill C-126 is necessary to remove any ambiguity in this matter and to clearly define the status of country elevator operators. This could be done by adding the following words to Section 3, Subsection (3) (a) after the word "functions"

including managers and/or operators of country grain elevators as specified in the Canada Grain Act.

We submit that only by this means can the trade be properly protected from the provisions of the Act which are not compatible with the efficient operation of the country elevator system in Western Canada.

Mr. George Heffelfinger is president of the National Grain Company. He is here and perhaps he could answer the questions Senator Lambert asked in regard to salaries.

Mr. G. Heffelfinger, President National Grain Company Limited: You were asking the average salary of elevator men. I think it would vary somewhat from company to company, but I think the average would be roughly \$300 a month in salary. He might also have a further \$100 a month by way of bonus, commission on sales of fertilizers, farm supplies, etc.

Senator McCutcheon: You pay a commission in addition?

Mr. Heffelfinger: This is the commission I am referring to—\$100 a month which would be commission on sales of farm supplies and fertilizers, as well as the bonus at the end of the year for a good efficient operator.

Mr. Lamont: He would have additional remuneration from other functions carried out in the community.

Senator Kinley: I notice in your submission you avoided the word "superintendent"—did you do that on purpose? This reads

(3) This Act does not apply to or in respect of employees who are

(a) managers or superintendents or who exercise management functions,—

Would it matter if you said "managers or superintendents"?

Mr. Lamont: Well, you see, we also operate terminal elevators. But we are not asking here for the terminals. We are asking here for the operators agents. We are not, for example, asking for exemption for pulpers. We are asking for the men responsible for, perhaps, half a million dollars worth of grain. He is responsible for grading, quantity and condition of the grain.

Senator Kinley: But you stress the function of your managers all through the brief, and it looks from what you say that he would be exempted. But then to come to the question of superintendents, are they a grade below that of your organization?

Mr. George H. Sellers, President, Federal Grain Company, and President, Alberta Pacific Grain Company: Could I answer this question? I think most of the companies are similar to mine in that we employ what we call a travelling superintendent for roughly every 20 grain elevators. He is a man who travels and breaks in new agents, who audits and weighs and checks the houses and conducts a supervisory activity. He may only visit each of the houses on an average of once a month or two, or sometimes longer. We employ that man with the designation of superintendent. Then we have what we call a division superintendent, covering perhaps, 100 elevators.

The Chairman: You mentioned that the managers of the elevators would get \$300 a month plus making an average of \$100 a month on commission. Is the \$300 a month salary or commission?

Mr. Heffelfinger: It is salary.

The Chairman: I notice that under the definitions in the Grain Act the word "manager" does not include a person in charge of an elevator who is remunerated for his services by commission. So if he is paid by salary he would not run against that prohibition, he would still be a manager.

Mr. Heffelfinger: The word "commission" refers normally to a subsidiary activity such as farm supplies through an elevator.

The Chairman: What makes you say that?

Mr. Heffelfinger: This particular activity is not covered in the Canada Grain Act and is something of a fairly recent nature. He carries on a grain business on a salary. He may receive a bonus on the grain business, which you might call the grain bonus, because frequently it is calculated on the bushels he handles a year.

The CHAIRMAN: Is he in charge of the elevator and does he receive a salary for being in charge of the elevator?

Mr. HEFFELFINGER: Yes.

Senator LAMBERT: That bonus depends on whether he has an overage or a shortage, I expect.

Mr. LAMONT: It is based on the volume he handles.

Senator LAMBERT: I would like to disagree at one point. I think a statement was made that one of the responsibilities of the operator is to determine the grade of the grain that comes in. That is something which refers to the inspection that is given to it by the official inspectors in Winnipeg.

Mr. LAMONT: If he accepts grain from a farmer and grades it No. 2 Northern, he must pay the farmer No. 2 Northern, but if when the grain is shipped out it grades No. 3 Northern the company takes the loss.

Senator LAMBERT: The company very often appeals to the Inspection Department.

Mr. LAMONT: That is the old subject of grain and dockage. You send the grain in for inspection in Winnipeg and it is put in a sealed canister and the company must accept the grade set by the Inspection Department.

Senator LAMBERT: Therefore, the authority of the grain elevator operator is subject to the limitation of the supervisory inspection department.

Mr. SELLERS: There would be far less than 5 per cent of the grain that is handled which would be handled in that way today. Indeed, there would be a minimal fraction of grain that would be handled in that way today. A farmer brings in a load and he may go to the AP or if he does not like that he may go next door to the pool and in that way may protect himself against being undergraded. The reverse is more likely to happen, as the agent is more likely to get the grain to overgrade rather than the reverse.

Senator ROEBUCK: What happens if there is an upgrading? You have told us what happens if it is downgraded.

Mr. LAMONT: If the grain is taken at No. 3 Northern and it grades to No. 2 Northern, the company would gain, but I think you will find that is not usual. Mr. Parker, the President of the Manitoba Wheat Pool, who appeared before the Agricultural Committee a few years ago, submitted records to show a loss in grading.

Senator ROEBUCK: But in the individual case the farmer does not benefit by the upgrading?

Mr. LAMONT: No.

Senator HUGESSEN: This brief comes down to a question of law, as to whether it is really necessary or not—in other words, as to whether the bill as it stands, in its definition of management, or superintendents, or people who exercise management posts, is affected in any way by definitions in the Canada Grain Act. I refer to section 4 of the bill—which you referred to also, Mr. Chairman—which says:

This act applies notwithstanding any other law . . .

I think it stands entirely by itself. It refers to a manager or a superintendent or a person exercising management functions. I do not think we need look into any other act. Our Law Clerk might look into that during luncheon, to tell us whether he thinks the amendment suggested in this brief is really necessary.

Senator LAMBERT: May I ask if this includes the operation of a terminal elevator, or is it only the country elevator?

Mr. LAMONT: It is only the country elevator.

The committee adjourned at 1.00 p.m. until 2.15 p.m.

Upon resuming at 2.15 p.m.

The CHAIRMAN: Call the meeting to order. We now have Mr. W. J. Parker, President of the Manitoba Wheat Pool, representing the Saskatchewan and Alberta Wheat Pools.

Mr. W. J. Parker, President, Manitoba Wheat Pool: Mr. Chairman and honourable senators, I do not have a prepared statement, so obviously what I say will be somewhat shorter than a prepared script. I am appearing on behalf of the wheat pools at the request of the presidents of the two pools, neither of whom was able to attend on this occasion, and they asked me to do it for them. I know I speak with their consent, because we have discussed matters at length and have collectively spoken to the Minister of Labour in connection with the contents of the bill.

My submissions will be under three main headings. The first, Manager or Management Function. These elevator agents, commonly called agents by one elevator company, were traditionally called managers. We suggest respectfully to you that they are managers that manage and exercise management functions in respect to the handling of grain. As Mr. Lamont pointed out this morning, they receive up to \$300,000 to \$500,000 worth of grain and pay by cash ticket, which is acceptable anywhere, and there is only one signature on the ticket.

Secondly, they are responsible for the weighing of the grain and the grading and for the dockage. As Mr. Lamont pointed out, rarely does an individual farmer send in grain for grading by a Government inspector. That is a right to them, and not exercised to the extent it was 40 years ago, but the right is still there, sir.

Senator PEARSON: Does that apply to barley also?

Mr. PARKER: Barley is bought on sample. These agents are managers, as I wish to call them. They are licensed by the Board of Grain Commissioners under the Canadian Grain Act, and they must stand on their own feet before that tribunal if their overage is in excess of one-quarter of one per cent. No general manager of a company can defend them. They might make excuses and explain before the board why they found themselves in this position, but the board may cancel their licence, because they must stand on their own feet. We can go in and try to explain why a man has put himself in that position, but that does not excuse him—he is solely responsible. Secondly, he is responsible to the company if he has a grain shortage, and he is responsible for the grades.

Now, as Conductor McKichan has pointed out, and as Mr. Lamont said this morning in his script, I would point out that when Conductor McKichan wrote that, not many elevator companies were handling farm supplies. This has been going on in the United States for the past 30 years, and within the last ten or 15 years has become more prevalent in western Canada in the pools, amongst grain growers as well as the North West Line, who are all in the farm business now.

In the majority of instances these elevator agents were paid a flat or stipulated salary, plus unstipulated bonuses, or whatever you care to call it, at the end of the year, depending on the results and the volume handled. In all instances they are also paid a commission on the approximate tonnage they sell of wheaticides or other pesticides they may sell on behalf of the company.

Our own company handles various other kinds of farm supplies, even to machinery, but the agents are all paid commissions relative to the amount or particular units of the particular supplies they sell.

A question was asked this morning about the salaries and wages, which run roughly to about \$300 a month in the Manitoba pools. The average salary is about \$357 a month. At the top, there are a few at \$415 a month, or almost \$5,000 a year. One collected \$800 for seed commission, and \$1,200 commission

on fertilizers, and other things, plus \$600 for selling hail insurance. He had a gross take of approximately \$8,000.

Senator ISNOR: When does he make these sales, in his spare time?

Mr. PARKER: All through the year.

Senator ISNOR: During the working day?

Mr. PARKER: During the day, during the evening, early in the morning; but usually during the day. He takes fertilizer orders in the winter time, because fertilizer is usually bought in January, February, March, and in the fall. However, pesticides and wheaticides are bought at the time, because they don't know exactly when grasshoppers are coming, and they want the poison that night.

The CHAIRMAN: Mr. Parker, while on this particular subject of the functions of managers, I should like to read the opinion of our Law Clerk, who was asked for an opinion on this point:

In my opinion, country elevator operators, on the basis of the able and comprehensive description given as to the nature of their work, are excluded from the operation of the Bill by reason of the words in sub-clause (3) of clause 3, "or who exercise management functions". I believe that these words in themselves would operate to exclude such operators and that any restricting definitions given in the Canada Grain Act, for the purposes of that Act, would not govern in the interpretation of the words quoted. In my opinion, it is a clear case for the application of the literal canon of construction, namely that statutory words are constructed in their ordinary, grammatical sense.

Moreover, as pointed out by Senator Hugessen, the introductory words of sub-clause (1) of clause 4 recite, *inter alia*, that "This Act applies notwithstanding any other law".

In the light of the foregoing, in my opinion, country elevator operators are excluded from the operation of the Act.

(signed) E. Russell Hopkins

Law Clerk and Parliamentary Counsel.

Senator THORVALDSON: That, of course, is only a legal opinion which might be reversed by a court.

The CHAIRMAN: Any legal opinion may be reversed by the court. However, this bolsters the presentation you are making, Mr. Parker?

Mr. PARKER: Yes.

Senator THORVALDSON: It does not affect the argument that if we can make the language just as clear by a simple amendment it might be a good thing to do so.

The CHAIRMAN: It may be the opinion of some or a great many of us that the language is there.

Mr. SELLERS: Mr. Chairman, I do not mean to interrupt, but I think the reason we are here is that our counsel reflects more or less what that statement said; however, it was left clearly before us that it was a difficult legal question that could lead to controversy and it was wise and important to clarify it to be sure at this time.

Mr. PARKER: In answer to the legal opinion you have read, Mr. Chairman, we would be gravely concerned whether it would be so interpreted by the courts or not, because as I understand it, that is not the opinion of the Department of Labour or its Minister, since we have had more than one meeting with them about this matter, and the answer was that there were, subject to restricted

hours, the other terms of the act, or whose opinion prevails. We would be happy, sir, and gentlemen, that it might be so stated in the act so that it would not be necessary for us to go to court to determine what is the answer. This concerns us a great deal, because we are not satisfied with the terms of the act, if the interpretation is that the hours of labour are restricted according to the act. With respect to holidays with pay, with respect to payment for services rendered, we are so far above the minimum that we are not in the same class at all.

This is dated September 3, and has been handed to me by Mr. Lamont. He quotes from a letter from the honourable minister:

I am convinced that this lengthy list of duties and responsibilities clearly indicates that some of the elevator operators exercise management functions and, therefore, the provisions of Bill C-126 would not apply to them.

That is the quote from the minister's letter. All the elevator operators are privileged to exercise the same function.

Mr. Lamont goes on in his letter addressed to the Honourable Mr. MacEachen:

We were somewhat at a loss to understand the underlying qualification "some of the elevator operators" contained in your observation. We would respectfully suggest that the duties and responsibilities are applicable to all country elevator operators.

We do not divide between them. These people are free to go out and make money if they want to work. We do not want them restricted; we do not want them tied down. I am speaking now for the Manitoba pool particularly. We have never yet from any one agent had criticism of hours. These agents are public relations people on the small community. Some of them have 30 or 40 customers. I have one that has 600 customers. He is a public relations man to every member of his community, no matter what their language, no matter what their ethnic background may be. Many agents are leaders in 4-H clubs and in curling rinks and are part and parcel of the community, and farmers are not asking them to work as hard as the farmers work, but there are times when you cannot operate an eight-hour day or a 40-hour week if you are going to handle grain in the way in which we do in western Canada. If you are interested in moving it as economically as possible you should not impose governmental restrictions that tend to make it less efficient than people can do it themselves in the competitive grouping we have in Canada.

I think this is one of the first times I and the pools have been in complete sympathy with the North-West Line Elevator operators, and I can agree wholeheartedly with the representations made by them and by Mr. Lamont and the answers given to questions. This is a free enterprise proposition—

Senator SMITH (*Queens-Shelburne*): Just in order to make the point clear, when you are making this statement you have now been making, are you only referring to operators of elevators or to all the people who work for them?

Mr. PARKER: The country elevator operators only.

Senator SMITH (*Queens-Shelburne*): Do I understand you have just said the minister and the department have told you they come under the bill like anyone else and they are going to enforce them as though they were not managers?

Mr. PARKER: This is exactly what we were told.

The CHAIRMAN: The letter does not read that way.

Mr. PARKER: But Mr. MacEachen's letter says that some elevator operators would be exercising management functions, but the others exercise all the

management functions except they may not be selling farm supplies. This is up to the individual, whether he wants to exercise himself or sit on his fanny and collect the money.

This is a free enterprise proposition, and we do not want them restricted so they cannot exercise to the full their ability to operate efficiently, which would entitle them to bonuses by way of increased selling and promotions. The only reason he is selling is because he can get it a little cheaper to the farmer than through ordinary terms of trade.

The CHAIRMAN: In relation to these extracurricular activities, these men may not be employees of elevators at all?

Mr. PARKER: You ask somebody to keep time. As Mr. Sellers pointed out this morning, your travelling superintendent, who is the only person directly over them, may visit them once in a month or every two weeks or once in three months. Otherwise he is on his own. The travelling superintendent is there to help him if he has any trouble. How much work they generate for themselves is entirely up to them.

The CHAIRMAN: You are missing my point. You have a manager of a grain elevator. He performs those functions we were told about this morning, and the opinion we have in relation to those functions that he performs is that he is performing duties of management and, therefore, is exempt from the provisions of the bill. Now you are saying there are other things that he does. In relation to those other things he may not be in the employee category at all, and, therefore, we are not concerned about him in that capacity in relation to the bill at all.

Senator PEARSON: I would submit even though they are on a straight salary basis they are performing the managerial function. No matter whether they are salaried staff or on a commission basis, they are still working as a manager.

Senator SMITH (*Queens-Shelburne*): If that is so, the act does not apply to them.

Mr. PARKER: All we are asking is that somebody make it very clear in the act that they exercise management functions, and then we are satisfied.

Senator CROLL: Isn't our function to make law and not to interpret it? Let us deal with the section.

The CHAIRMAN: We have gone, I think, as far as we can in indicating a viewpoint on the scope.

Senator ROEBUCK: Mr. Parker has asked us, as a matter of fact, to find that these men are in a managerial position. I, for one, know nothing about it except what I have been told by Mr. Parker, and he says they are in a managerial position. It is certainly not our function to find a question of fact.

The CHAIRMAN: Certainly, if they are in a managerial position they are out.

Senator CROLL: And our law clerk tells us so.

Mr. LAMONT: We would like to see the law clerk tell the department so.

Senator CROLL: Nobody tells the department anything.

Mr. LAMONT: The law should make it clear just what these men are.

The CHAIRMAN: The law is clear, that if you are performing management functions you are a manager. The question we are not in a position to decide—and we would have to set up a board of inquiry to hear evidence and arrive at conclusions of fact on—is whether in all the circumstances, based on that evidence, he is performing managerial services or not. The statute is clear as to who is a manager.

Senator ROEBUCK: That is not our function to decide.

Senator THORVALDSON: Nevertheless, we have a question of fact as to whether these men would be deemed to be managers, and if the Department of Labour said, as they have presumably said, "No, we do not believe these men are excluded." And the minister says, "Well, some of them may be excluded"—where do these people stand then? It is a simple thing to adopt an amendment to clarify the position.

The CHAIRMAN: If you say that a person who performs management functions is not under the act, will you amend that so as to make it abundantly clear that what you say is they are not under it?

Senator THORVALDSON: That is all I want to do.

The CHAIRMAN: Yes, but what language would you use? Frankly, I do not know of any.

Senator THORVALDSON: The language they have suggested.

The CHAIRMAN: I do not think that covers it.

Senator THORVALDSON: They suggest that after the word "functions" in section 3(a) that you add, "including managers and/or operators of country grain elevators as specified in the Canada Grain Act."

We have said we agree with that position. Certainly, there is doubt as to the law on it. So all these people are saying is: Why not make it abundantly clear by the addition of those extra words?

Senator CROLL: If I heard the gentleman there correctly—and I do not know his name—

The CHAIRMAN: Mr. Sellers.

Senator CROLL: Yes, Mr. Sellers, he said that their legal authority agreed with our legal authority. That should make it doubly clear now.

Senator THORVALDSON: Let us clarify that point. I think we ought to hear from Mr. Sellers again.

Mr. SELLERS: I said that the reason we are here and taking up your time is not because we did not have something else to do, but because coupled with what he said this was a controversial point and one that could come into the courts of law, and it was wrong, and that if something was not done to clarify what is meant now, based on the wording of the Canada Grain Act, evolved many years ago, before country managers were dealing with fertilizers and chemicals and many other things they are now—

Senator ISNOR: I understand the minister is going to appear before this committee.

The CHAIRMAN: Yes, I might as well tell you at this time that if we are ready for the minister at 5 o'clock he would be available at that time. So, if we conclude all the work we have to do before 5 o'clock we could adjourn until 5 to hear him. If we do not hear him today he will not be available until tomorrow afternoon at 2 o'clock.

Senator ISNOR: I raise that question because we now have an interpretation from our own Law Clerk, and we have heard from those who have appeared before us today. Surely, Mr. Chairman, when you advise the minister of the two points of view he will be able to advise you of what the Department's view is.

The CHAIRMAN: Oh, yes. I think we have gone as far as we can on the subject at the present moment. Are there any questions that members of the committee wish to ask Mr. Parker?

Senator KINLEY: What you are really concerned about is the number of hours, and the overtime.

Mr. PARKER: No, we pay overtime at the Lakehead, at the terminal there. But, these people I am speaking of in the country elevators determine them-

selves what hours they work. The minister was asked: "When the elevator operator opens the door of the elevator is he on duty?" The answer was: Yes. He may open his elevator and then go to the coffee shop, or down to the curling rink for an hour or two.

Senator KINLEY: It seems to me, Mr. Chairman, that the objections are not to the minimum wage but to overtime, and not to overtime in itself but to the restriction on overtime to 8 hours a week. This is a rather serious thing. There are many others who are disturbed about that feature of it.

The CHAIRMAN: Of course, if your duties are such that you cannot—

Senator KINLEY: Yes, I know about that.

Mr. PARKER: I have a letter here from Mr. Gibbings, the President of the Saskatchewan Wheat Pool that is addressed to the minister.

Senator KINLEY: Have you union organization in your pool?

Mr. PARKER: Yes, at the Lakehead.

Senator KINLEY: It is not a co-operative?

Mr. PARKER: Yes, the pools are co-operatives.

Senator KINLEY: Then, they would not be subject to union control.

Mr. PARKER: Well—

The CHAIRMAN: Do not let us enlarge the area of discussion. I think we should stay with the provisions of the bill.

Mr. PARKER: In the Saskatchewan Legislature in 1958 or 1959 there was passed the Work Act—I have forgotten the exact name of the act, but it is immaterial—in which the work week is determined at 44 hours, and an 8-hour day. Then the act goes on to make provision for certain exclusions, and the first exclusion is country elevators. The very first exclusion in the Saskatchewan Act is country elevator operators. They are not subject to the terms of the legislation in the province of Saskatchewan relative to hours of work. There is a number of exclusions to that act, and the first one is country elevator operators. That act was passed in 1958 or 1959, and certainly Mr. Douglas is sympathetic towards labour.

Senator THORVALDSON: If that is the case they could not have been so sure that the courts would hold that these would be management functions.

The CHAIRMAN: Either that, or they could have been so sure that they decided—

Senator THORVALDSON: They were as sure as Mr. Hopkins seems to be sure that they are excluded. They excluded them at that time because there was a doubt.

The CHAIRMAN: Senator, we cannot discuss the procedures under the Saskatchewan legislation, which is not before us, or be actuated into doing what they did. We have to take this bill as it is before us.

Senator THORVALDSON: That does not prevent my saying what I have said.

The CHAIRMAN: It does not prevent you from saying what is pertinent.

Senator ASELTINE: Did Mr. Gibbings agree with you, Mr. Parker?

Mr. PARKER: Yes, he did. I have a letter from Mr. Gibbings in which he refers to the flexibility that the minister has introduced into the act, and he makes the point that the fact that the minister has introduced flexibility indicates he has some doubts about making it work down the line. We do not think this idea of averaging has the remotest possibility of working in respect of country elevators. We think it is completely useless, but the minister does not agree with us at all.

Senator SMITH (*Queens-Shelburne*): Have you had a chance of talking to the men who work for the operators?

Mr. PARKER: I am talking now of what we call the managers. They hire and fire their helpers who are trainees. When the trainees are trained sufficiently they then become competent to take over an elevator on their own. But, these managers of country elevators hire and fire, and they have a lot of responsibility. I am just labouring the point, Mr. Chairman.

Mr. LAMONT: I should like to point out that we are not seeking exemption from the act for the helper. What we have said concerns only the operators.

Senator ROEBUCK: Are there certain hours that the elevator is supposed to be open? Do you open them at a certain hour in the morning, and close them at a certain hour in the afternoon?

Mr. PARKER: This will depend upon the season of the year. If it is in the harvest season and it happens to be a dry morning with not much dew a farmer may want to deliver at 7 o'clock. However, during the greater part of the year the elevators do not open before 8 o'clock. There is no specific hour, but 8 o'clock is generally the hour they open. Then they are closed for an hour at noon, opened again at one o'clock, and then they are closed at 5 or 6, but it is entirely up to the operator. Does that answer your question, senator?

Senator ROEBUCK: Yes, thank you.

The CHAIRMAN: Then, if Mr. Parker is finished we shall hear from Mr. Runciman.

Mr. A. M. Runciman, President, United Grain Growers Limited: Mr. Chairman and members of the committee, as President of United Grain Growers Limited I wish to thank you for an opportunity to discuss one aspect of the bill before you for enactment of the Canada Labour (Standards) Code. Members of your committee from western Canada will know of our company. It is owned by prairie farmers and operates 769 country elevators in the prairie provinces. These structures, together with facilities at the Lakehead and at the Pacific Coast, have a total capacity of 70 million bushels.

Mr. Chairman, a good deal of what I have to say today will be a repetition of previous presentations, and it is also an endorsation of them. I am a little disturbed about the unanimity that seems to run through the ranks of all of us from western Canada.

Our representations today will be confined to one fact only. The provisions of Part I of the bill, in reference to hours of work, cannot be applied to the agents who operate country elevators without seriously impeding the handling and marketing of western Canada's grain. The country elevator agent's work is of an intermittent nature. During certain periods of the year, to suit the needs of his farmer customers, he must be prepared to receive deliveries of grain at a fairly early hour in the morning and also well on into the evening. Thus, nominally he has a long work day although the periods of activity may be separated by intervals of rest or of absence from business premises. But, since he must be available when required, it may be that the whole period from the earliest delivery in the morning until the latest in the evening could be regarded as hours of work. That is especially so since the Canada Grain Act requires that on each day upon which an elevator is open it shall, at all reasonable hours, receive all grain offered.

This problem cannot be solved by temporarily replacing the agent with a substitute. He has charge of the grain in the elevator, and is responsible for its quantity, grade and condition. That responsibility cannot be transferred from one man to another without a weigh-up of a quantity of grain which may be worth anything up to \$200,000. The need for a weigh-up corresponds with the

need for counting the contents of a cash box when it is transferred from one custodian to another.

Nothing we have to say runs counter to the principles of the bill which have been generally accepted. We do not believe that at any time there has been an intention to bring the operators of country elevators within the scope of the hours of work provision. However the provisions which might exclude them do not do so to the extent that may have been intended.

There is, for example, the provision for averaging overtime for a period of weeks. That is unavailing since we have no means for recording, or even for designating the actual hours worked by the operator of a country elevator. We cannot be sure in advance when the peak months of activity will occur. These may be October and July, as has been the case at most points during recent years. But changes may take place, caused by world market conditions or by local weather conditions.

Paragraph (a) of subsection 3 of section 3 exempts from application of the Code managers or those who exercise management functions. At first sight this may appear to cover the elevator agent who is in sole and complete charge of business premises, who is the custodian of valuable assets, who has power to disburse the company's funds and who might be given the title of manager had not the practice grown up of giving him another title. But no one could be sure that this proviso would be interpreted as applying to the elevator agent unless the intent of the Act were clearly spelled out by adding a phrase "including operators of country elevators" after the words "who exercise management functions".

I think this ties in closely with some of the previous discussions we have heard, and is included in this presentation because of some of the discussions we had with the minister.

While such amendment would eliminate the difficulties described, the problem could be met by a more limited amendment which would apply only to Part 1 of the Canada Labour (Standards) Code. It would read as follows:

This part does not apply to or in respect of an employee who is in charge of and is responsible for the care, custody and control of any work or undertaking or an integral part thereof declared by the Parliament of Canada to be for the general advantage of Canada.

Country elevators have been so declared in the Canada Grain Act.

We suggest that particular wording believing that those considering the bill might prefer an indirect instead of a direct reference to the elevator operator. However, if any classes of employees are to be named directly as excluded from the operation of the Code or of Part 1 it would be appropriate also to name operators of country elevators.

If the legislation should not be so amended we feel assured that country elevated operators would be exempted from its operation for a period of 18 months by order of the Minister under subsection (1) of section 51. At the end of that period, however, the problem would re-emerge. It is true that under subsection (2) of section 51 provision is made for suspending Part 1 for a longer period than 18 months by Order in Council. But that subsection will not take care of the country elevator problem because an order made under it would have to prescribe hours of work to apply during the period of deferment or suspension.

The CHAIRMAN: Supposing an order was made under that subsection prescribing the hours of work as being those customarily performed by the managers?

Mr. RUNCIMAN: If that was for an indefinite period of time it would probably accommodate us. But it had to be for a specified period of time complications could arise. Let us take for example last Fall in many parts of

Alberta instead of getting on with the harvest at a normal period, inclement weather arrived, and if we had a dispensation to cover six weeks during the harvesting period the elevator operators could do nothing and we would be in a position of having to go back for another extension when the harvest recommenced.

The CHAIRMAN: But that would be the custom of their work when they were performing it.

Mr. RUNCIMAN: Provided it was not for a specified period of time. If it was for a non-specified period of time, I would agree.

From this submission it will be apparent to your committee that we are not seeking to oppose the principle of this legislation but rather to have such improvement made in its technical drafting as will more clearly accomplish the intended purpose. Certainly nowhere, either in Parliament or in the administration does any intent exist to allow a development which would impede the flow of western grain when crop conditions, weather conditions, market conditions and efficient farming indicate that grain should be moved.

To amend the legislation at this stage will be to assure its efficient administration. If it is not amended as we suggest it will be a source of trouble to our industry for many months ahead. First it will be necessary to obtain from the minister an order to suspend the application of Part 1 to country elevator operators for 18 months. Then we shall have to make use of that 18 months in an endeavour to obtain from a subsequent session of Parliament an amendment such as we are recommending to you today.

The CHAIRMAN: Any questions?

Senator METHOT: May I ask if the elevator operators, or whatever you call them, have a union?

Mr. RUNCIMAN: Only in one case in Western Canada. The Saskatchewan people have an operators' union. I should not be passing on information about it, but I understand it is not as completely effective as a union might be in industry, but I take it it is moving in that direction. Mr. Parker might be able to add something.

Mr. PARKER: They are the only grain company that has a so-called union.

Senator METHOT: Have you a standard contract?

Mr. PARKER: They have. I have a standard contract with the pool, not with anyone else.

Senator METHOT: Do you know if the others have standard contracts with their operators?

Mr. PARKER: I don't believe any line company has.

Senator KINLEY: Isn't it usually accepted that a man who is an owner in a company cannot belong to the union—that they won't take him?

Mr. RUNCIMAN: I don't know that that will conflict with the case of the Saskatchewan Wheat Pool employees.

Senator KINLEY: But the farmers all have a share?

Mr. RUNCIMAN: But not the employees. Many of these elevator agents would have no farming interests. They are simply hired by the management of the organization.

Senator ISNOR: I wonder why the solution is not in the hands of these gentlemen themselves. If they change the word "operator" to "manager" would that not solve their problem?

Mr. RUNCIMAN: I'd be very happy to think so, senator, but I believe I expressed an aside when presenting this brief that in our discussions with the minister and the deputy minister we never got to the point where we felt any assurance that this would be the case. If we had that assurance we would have felt much stronger.

Mr. PARKER: I might add one of our member companies applied to the Board of Grain Commissioners for permission to call his agents managers, and it was pointed out that under the Canada Grain Act he could not do so.

Senator ISNOR: I recognize that, but now you have a new Act and this would supersede it.

Mr. PARKER: The Canada Grain Act is still in effect, and we are still governed by the Canada Grain Act.

The CHAIRMAN: What the senator is saying is that so far as this bill is concerned, it supersedes any definition of a manager or an operator that may be in the Grain Act.

Mr. PARKER: I would not like to risk that in court.

Senator CROLL: There they are back again—litigious people.

The CHAIRMAN: My friend says he would not like to risk this in court, but the opening says that this Act shall apply notwithstanding any other law.

Mr. PARKER: But we have another hurdle, and that is the minister.

The CHAIRMAN: The minister does not hurdle the court.

Senator ISNOR: Forgetting the minister for the moment, could you make that change yourself in your association?

Mr. RUNCIMAN: With the single exception of the fact that you do not know how far the Board of Grain Commissioners might go in insisting that we use the terminology of the Canada Grain Act. Otherwise we would be happy to do so.

The CHAIRMAN: Any further submissions to be made by your group?

Mr. RUNCIMAN: No.

The CHAIRMAN: Thank you. The next group we have to hear is the Canadian Warehousing Association. We have with us Mr. Paul G. Kenwood, Vice-Chairman, Household Goods Division; Mr. Douglas G. Slater, President; and Mr. H. Cecil Rhodes, Executive Vice-President. Mr. Kenwood will read the brief.

Mr. Paul G. Kenwood, Vice-Chairman, Household Goods Division, Canadian Warehousing Association: Mr. Chairman and honourable senators, our association, which, by the way, is a management association, welcomes the opportunity to present, for your consideration, its views concerning the application of Bill C-126 to the household goods moving industry engaged in inter-provincial operations.

We are particularly concerned with the section of the bill which relates to maximum hours which may be worked in any one day or week.

At the time this bill was given its second reading in the House of Commons, our Association directed a protest to Hon. A. J. MacEachen, Minister of Labour, in which we detailed some of the serious difficulties which would be experienced by interprovincial carriers of household goods, if the hours of work regulation was applied in the proposed form.

Some of the areas which particularly troubled us were:

- (a) The household goods moving industry is highly seasonal in character, with optimum pressure being exerted during the summer months, followed by a substantial reduction in volume of business in the late fall, winter and early spring. It is an established fact that the volume of household moves during the months of June to September exceeds by far the number of moves during the balance of the year. This situation is generated mainly by the desire of most families to avoid dislocation of their children's schooling. As a result, our industry is required to meet

this excessive demand for service by extending what might be regarded as normal hours of work.

The variations in average hours worked during the twelve months' period are evidenced by the attached summary of a questionnaire answered by representative members of our Association. The pattern of relatively low hours of work in the months of January, February, March and December, and the substantially increased hours of work during the summer months, will be apparent from this summary.

- (b) Should hours of work be restricted sharply during the period when unusually heavy demands for service are being made by the public, it is our belief that a very substantial segment of the public would inevitably be inconvenienced seriously by the moving industry's inability to provide the required service. Quite apart from the inconvenience involved in delays in completion of household moves, the cost factor to the public must also be considered. Under the present arrangement, a responsible moving company will endeavour to complete a household move as speedily as possible. If its employees are restricted in the number of hours they may work, the period between the pickup and delivery would be extended, with the additional cost, of necessity, being borne by the shipper.
- (c) Government employees—notably those attached to the armed forces—are usually transferred on a closely scheduled basis to minimize the cost of interim lodgings and with view to relocating expeditiously. A sharp restriction on the working time of appropriate employees, as proposed, would, we believe, have an adverse effect in both areas.

The Department of National Defence schedules the transportation of most of its personnel during the summer months, thus contributing heavily to the industry's problem of moving and storing household effects during the peak periods.

- (d) The household goods moving and storing industry—composed chiefly of relatively small, family-owned companies—has been experiencing great difficulty in recent years in maintaining an equitable balance between rising costs and charges made for services. It has, in fact, been a losing battle, as is evident from the results of a Cost Ratio Study carried out by an independent cost accounting firm, under the sponsorship of our Association.

The net operating profit (before income tax) hit a new low in 1963 of 2.2%—down from 3.8% in 1960. In the trucking division alone (with proper allocation of overhead), the profit position worked out at a loss of 11.2%—up from a loss of 7.9% in 1960.

We mention this situation to emphasize that our industry simply can not absorb such restrictive measures as are proposed in regard to the 40-hour work week, without (a) a prohibitive loss picture, or (b) increases in the charges made for services.

- (e) In addition to our concern with the detrimental effect of the hours of work limitation on the general public and the companies operating moving and storage businesses, we would be remiss if we did not indicate the strong possibility of lower take-home pay for the appropriate employees. This concern is shared by many employees who have channelled petition forms through our Association to the

Minister of Labour, pointing to the areas in which they would be specifically affected. A copy of the petition form is attached hereto. This will be self-explanatory.

- (f) In conclusion, we have studied with considerable interest the statements made by Hon. A. J. MacEachen, in the House of Commons, in which he indicated the government's awareness of the serious problems which would be created for the trucking industry as a whole, if the proposed hours of work limitations were imposed immediately or even in the relatively near future. Mr. MacEachen's appreciation of the serious disruption which would develop in the operation of interprovincial motor transportation has been evidenced by his statements in the House that it would be impractical and unfair to demand a specific deadline for industries such as ours within which to adjust to the requirements of the hours of work legislation.

The principal purpose of our presentation on this occasion is to invite further consideration of our original request for exemption of our industry from this particular requirement, in view of the unique operating pattern of the long distance household goods moving business.

Should the Senate's position with regard to the acceptability of Bill C-126 coincide with that of the House of Commons, we would again stress the necessity for an indefinite deferment of the application of the hours of work limitation to our particular industry.

Again, on behalf of the members of the Canadian Warehousing Association, we would like to express our appreciation to you, Mr. Chairman, and to your Committee for the opportunity it has granted us to restate our views on this subject.

Senator ISNOR: Is your Association a Canadian-wide organization?

Mr. KENWOOD: Yes, sir.

Senator ISNOR: How far does it stretch?

Mr. KENWOOD: From coast to coast. We represent just over 200 household moving firms.

Senator CROLL: I think we could appropriately recommend to the minister deferment.

The CHAIRMAN: It is the minister who has to make that decision, under the bill.

Senator POWER: Your request is to exclude the whole of the industry?

Mr. KENWOOD: The household goods moving industry is interprovincial.

Senator POWER: You wanted to exempt all the people employed in that particular branch—are they truckers?

Mr. KENWOOD: We are truckers but not the same as regular route people as they are known in the trucking industry. I would safely say there is not a household goods mover who has more than 5 per cent of his total moving field engaged in interprovincial traffic, but under the bill as it is drafted now our total employment, even those engaged in local goods moving, storage, packing and so on, will fall under this legislation.

The CHAIRMAN: Why do you not divide the two and have two companies?

Senator POWER: Will this include your office and all your employees?

Mr. KENWOOD: In the way we read the bill, it will.

Senator POWER: What grounds for exemption have the office employees, clerks and people of that kind?

Mr. SLATER: We are not asking for that. It is our understanding that because we operate interprovincially our whole operation will be subject to the terms of the act. We are not concerned about office staff or our local moving grades, but we are concerned about those who deal with long road hauls, travelling from coast to coast.

Senator POWER: Nevertheless, you are asking for exemption for the entire industry.

Mr. SLATER: Because our industry would be subject to the act, because it is interprovincial. If it were defined otherwise—

Senator POWER: That includes office staff?

Mr. SLATER: That is right.

Mr. KENWOOD: The minimum wage rate would be well above that in the other parts of the act. Our office staff do not work the hours—

Senator PEARSON: Are you not largely an organization engaged in warehousing or moving, urban rather than—

The CHAIRMAN: Interprovincial?

Mr. KENWOOD: We have a division. Most of the independent operators belong to van lines and operate equipment within the van lines.

Senator THORVALDSON: You are not concerned with the question of minimum wages?

Mr. KENWOOD: No, sir.

Senator THORVALDSON: As I understand it, you are saying you are well above the average wages in the bill, consequently, you are only concerned with the hours of work?

Mr. KENWOOD: Right, sir.

Senator ROEBUCK: Mr. Kenwood, you say that during your busy period your men and trucks work very much more than nine hours a day. Would you mind telling us how long they do work?

Mr. KENWOOD: On an average, in the peak season, between 50 and 60 hours a week.

Senator ISNOR: That would be from May until October?

Mr. KENWOOD: That is right, sir. Actually, if you turn to the back page of your brief you will find the long distance—

Senator ROEBUCK: Witness, are you so much concerned about the limitation of hours as you are about the increased rate of pay after the eight hours has elapsed? Are you objecting to that?

Mr. KENWOOD: No, sir. We are paying it now; in many instances we are paying over that.

Senator ROEBUCK: But your overtime is time and a half?

Mr. KENWOOD: That is right.

Senator ROEBUCK: Are you paying that as it is?

Mr. KENWOOD: Some of us are at the present time. My own company, for instance, is paying overtime after ten hours. Next year it will be after nine hours.

Senator ROEBUCK: So your objection comes down only to the limitation on hours?

Mr. KENWOOD: That is right, sir.

Senator ROEBUCK: Then can you not apply to the minister for a ruling on that under section 51, and if it is necessary to work during that period, has not the minister power to relieve you?

Mr. KENWOOD: If we are included in the act, we will have to.

Senator ROEBUCK: Is there any objection to applying to the minister?

Mr. KENWOOD: There is an objection to applying. There is an objection to being included in the act because it is such a small portion of our total business.

Senator ROEBUCK: But it is important so far as finance is concerned. Is there not enough money involved to justify your making an application?

Mr. KENWOOD: I would say that if we are brought under this act it will cause a raise in the long-distance moving rates to the general public of approximately 25 per cent.

Senator ROEBUCK: Not if you are given an exemption as to the limitation?

Mr. KENWOOD: Oh, no, not if we are given an exemption as to the limitation.

Senator ROEBUCK: Then you will be all right, will you not?

Mr. KENWOOD: But you see the sad part of it is the—I guess the word would be “discriminatory” legislation against a small segment of the household moving industry. Some household movers are not in the interprovincial field. We must compete with these people locally, and therefore we will be at a level up here and they will be on a level down here.

The CHAIRMAN: Would you say that men even in the peak seasons work more than 2,080 hours in a year?

Mr. KENWOOD: Yes, sir.

The CHAIRMAN: How many of them?

Mr. KENWOOD: I would say that the average hours in our industry at the present time amount around 3,000 to 3,300.

The CHAIRMAN: Any other questions?

Senator ISNOR: Mr. Kenwood, would you consider the piggy-back operations of the Canadian National Railways to be in competition with you?

Mr. KENWOOD: No, sir, they do not handle household goods.

The CHAIRMAN: Any other questions?

Senator THORVALDSON: I was going to ask the gentleman if he has a specific amendment in mind. Have you drafted any specific amendment?

Mr. KENWOOD: No, we have not, sir.

The CHAIRMAN: Any other question? Is there anything you want to add, Mr. Slater?

Mr. SLATER: No, it has been pretty well covered, Mr. Chairman.

The CHAIRMAN: Now we have the International Brotherhood of Teamsters, represented by Mr. I. M. Dodds, its Canadian director. He will give the presentation.

Mr. I. M. Dodds, Canadian Director, International Brotherhood of Teamsters: Mr. Chairman, members of the Senate committee, I am very grateful, and our organization is very grateful, for the opportunity of appearing before you. Unfortunately, our counsel is tied up in court and cannot be here to present some of the ideas and facts that we have furnished him over a period of time. Therefore, it falls upon me to sort of bumble my way through any questions you might want to ask. There is a little information that we can supply you that we are interested in, mainly hours of work; and, of course, we are definitely interested, although it does not apply in our own industry because of our labour contracts, in the minimum wage law.

So far as we are concerned, basically our problem is long hours and the dangers that it causes on the highway through fatigue and other things that distract our drivers' attention. Within the industry itself where it is under organization we are not having too much of a problem. I do not know what cases the employers have presented to you, but I am interested in this: the

day that we have come to in 1965 is the day that we would like to operate in, so far as hours of work and wages are concerned, and also vacations—not back 20 some odd years ago.

Many, many years ago, when I was a brakeman on the railway we had a 100-mile division, which was called an eight-hour day, even then; but today our people are asked to work X number of hours, simply because the employer has never made an effort to put in weigh stations and turn our people around.

I do not know anyone in Ontario running into Quebec, or vice versa, unless perhaps it is the Sault running out of Toronto, where our people run over eight hours at the moment, except on our highway operations. So I don't know why an industry such as this would not be concerned with operating our people all these excessive hours. I would think the insurance companies would be concerned, knowing the fatigue that takes place on the highway, particularly at night. You do not know what you face when you meet two headlights coming towards you. The driver may have been in the saddle of the truck all the way from Winnipeg without stopping—this is the owner and operator. Nothing has ever been done about that to curtail his activities. He has been allowed to run free; no one checks up on him. He sleeps in the truck for the odd hours he does sleep, and he will be on the highway 20 hours out of 24 hours. Maybe he will take two hours' sleep here and there until he reaches his destination, say, Montreal. There he will pick up a load, turn around and go back to Toronto. That man is a menace on the highway, and we are deeply concerned, because there is no specific reference to him in Bill C-126.

We would certainly like you to give consideration to this matter.

I will be frank to tell you that we have presented a brief to the Minister of Transport, and the Minister of Labour was in attendance on this very matter. I do not know what you can do at this eleventh hour. We are here at the eleventh hour.

The difference between the trucking industry in Canada and the United States is that in that country the operators come under the Interstate Commerce Commission, whose regulations are very good. For instance, log books must be used in which the time of departure is registered, and a state officer can stop that truck and check the log book. Thus the officer is able to tell exactly how long the driver has been on the highway, and if he has reached his limit, to within half an hour, the officer can order him off the highway.

Senator ROEBUCK: What is his limit?

Mr. McDougall: Ten hours in any one day, 60 hours a week over a period of seven days.

Senator CROLL: Has mileage nothing to do with it?

Mr. McDougall: That is approximately 38 miles an hour.

Senator Choquette: How long would they drive at one time?

Mr. McDougall: Not more than 10 hours at any one time, or 60 hours in a period of seven days.

Senator Choquette: Do you mean he can drive 10 hours without stopping?

Mr. McDougall: Yes.

Senator Roebuck: And when can he start again?

Mr. McDougall: After he has been off duty 10 hours.

Mr. Dodds: This is not along the lines I heard here this morning, when the airlines were talking about these things. You cannot talk about our drivers in the same breath as you talk about an airline pilot. This standby and reporting time and actual hours the pilot flies the plane are different things. My contention is these people are a menace on the highway the minute they have gone in excess of 8½ to 9 hours, and these people are being forced to drive more at the moment.

Senator THORVALDSON: Apropos of that point, Mr. Dodds, I think there was evidence the other day that according to the accident figures, the truck driver rate of accidents was lower than that of the rest of the public. Do you agree with that or not?

Mr. DODDS: I agree with that, as far as their rates are concerned, but there could be a greater increase in the safety if these people were not driving these excessive hours.

Senator ROEBUCK: Have we any statistics on the accidents that occur after a man has been on the road, say, eight or nine or 10 hours?

Mr. DODDS: Yes, I have some right here, and I have the remarks that a magistrate made in a court.

Senator ROEBUCK: We would like to hear that.

Senator THORVALDSON: Those are not statistics but just somebody's opinion.

Senator CROLL: You will not take the chairman's opinion; now let us hear the court's opinion.

Mr. DODDS: This is not opinion, but it is a case which happened.

Senator CROLL: It is still an opinion.

Mr. DODDS: There were several people killed.

Senator CHOQUETTE: Is there evidence also that most of these drivers take pills to keep them awake, and then they have a blackout all of a sudden?

Mr. DODDS: Yes, it happens quite often. We call them "bennies". They are sneaking into our country from somewhere. It does not happen too much within the organized industry, but in the unorganized industry, with a broker-operator working unlimited hours, he is taking "bennies" to keep himself awake and he is rolling down the highway in a semi-dazed condition.

Senator THORVALDSON: What do you mean by "broker-operator"?

Mr. DODDS: He has his own tractor, and he is probably the fifth person to own it because the finance company has taken it back four or five times.

Senator THORVALDSON: I was going to ask this question a while ago. You talk about owner-operators who drive very long hours. I do not suppose you are suggesting the owner operators come within the scope of this act, are you?

Mr. DODDS: Yes, I do; I definitely do.

Senator THORVALDSON: The owner-operators?

Mr. DODDS: Yes, they definitely should.

Senator THORVALDSON: Yes, but do they?

Mr. DODDS: Gentlemen, if I may, I would like to refer to a transport collision on October 1, 1964. This is from the files of the police:

The deceased was driving from Rouyn, Quebec, to North Bay via #11 Highway and had reached a point on Highway #11 five miles north of the junction of Highway #64 where another carrier had pulled off the road to retrieve a spilled rack. All flashing lights on the stopped unit were in operation, nevertheless, the deceased struck the left rear corner of the parked trailer. The deceased's vehicle was gas-driven and fired upon impact, the driver was thrown to the pavement. He died from crushing injuries to skull and torso. Estimated speed at time of impact (50) m.p.h.

Senator WALKER: This is all very interesting. We read these things every night about all sorts of drivers. We are hearing now about something that is not in the bill. I think we could have a repetition of this a hundred times over without benefitting us at all. May we keep to the bill?

The CHAIRMAN: Yes, senator, but Mr. Dodds is presenting the case on behalf of his organization in the absence of their counsel, and I think that in the cir-

cumstances he is entitled to a little latitude. This is not going to take much longer.

Senator WALKER: I am referring now to the recitation of this accident.

The CHAIRMAN: That was in answer to a question that was asked by Senator Thorvaldson.

Senator ROEBUCK: In addition, he is answering a question I asked him.

Senator THORVALDSON: I want to say this, that my question had complete reference to the statistics of accidents in regard to truck drivers in the trucking industry vis-à-vis accidents in regard to the general public. I was saying testimony was given the other day that those statistics on the trucking industry of accidents were considerably lower than accidents among the general public. I do not see what references like this have to do with the question that I asked—namely, the statistics on accidents.

Senator ROEBUCK: I followed that by asking what statistics there were with regard to accidents occasioned by a man driving after eight, nine or 10 hours on the road. The witness is now trying to answer my question.

Senator CHOQUETTE: He is giving one specific case in the judgment of a magistrate. You are not going to get figures by that means.

Senator THORVALDSON: We are all aware of these facts. Everybody knows that fatigue is a tremendous hazard. I have been subject to that myself in driving long distances, and we all are. I do not think any of us is not aware of that problem.

Senator CHOQUETTE: Mr. Chairman, perhaps I can help. I know your solicitor is not here and that makes it awkward for you, but I and many other senators would like to know this. We are aware you have many complaints, but we would like to know what your complaints consist of, and what remedy you offer or suggest. For instance, if you said, "There is nothing in the act to prevent a man driving eight or ten hours without a break, but we are asking you to put something in this act to say that he shall go to sleep for two hours"—something concrete, then that would help. Have you any such suggestion you intend to make here today?

Senator MCCUTCHEON: Surely, we cannot have a law against insomnia?

Senator CHOQUETTE: No, but we have complaints, and what are the remedies proposed?

Senator WALKER: We want some information, and we are not criticizing you.

Mr. DODDS: I do not want a law against insomnia. It would handicap many bodies operating today. In the north country, where these people drive long hours and where there are no small towns they are going through, these things do happen on the prairies and in the north country. We are prepared to answer any questions, if you do not want these facts. I did misunderstand you gentlemen.

Senator CROLL: Was there any indication as to how long that man had been on the road?

Senator ROEBUCK: And what did the magistrate say?

Mr. DODDS: He said:

When imposing sentence, the learned magistrate revealed a profound understanding of the problem which the Teamsters and Transportation Safety organizations are attempting to combat. Addressing the convicted driver, the magistrate said:

"In the first place, the offence that you have committed requires that the court impose a penalty which will be a deterrent to others who would run the risk of falling asleep while driving . . . a motor vehicle. In my mind, to drive while you are over-tired and knowing that you need sleep, is just as bad as driving while you are impaired by alcohol.

Mr. McDOUGALL: The man had driven more than 30 hours and 500 miles, until this accident in which four people were killed in a head-on collision because he was on the wrong side of the road.

Senator CROLL: He had driven 30 hours?

Mr. DODDS: This is the magistrate's statement:

There is ample evidence to show that the defendant who had been working and driving for the greater part of 30 hours prior to the collision with very little if any sleep, and driving over 500 miles in that period, knew or should have known . . .

Senator THORVALDSON: There is no one here who would disagree with those things. I want to make it clear to Mr. Dodds that I am not disagreeing with those conclusions at all. I agree with him 100 per cent. Please, do not think we are critical of your views.

Senator CROLL: That is the point Mr. Dodds was making. As I understood Mr. Dodds, he was addressing himself to the hours of work.

The CHAIRMAN: That is right.

Senator CROLL: And he makes his point. Have you any more points like that, Mr. Dodds?

Senator McCUTCHEON: Was that an owner or an operator?

Mr. DODDS: Anyone in that condition is a menace on the highway, whether he is an owner or an operator.

Senator McCUTCHEON: But is there a truck operator who is working 30 hours at a stretch?

Mr. DODDS: Many of them pick up a load in Calgary and keep on going until they get to Montreal.

Senator PEARSON: On the owner-operated trucks is there a second driver who sleeps while the one is driving and who then takes over?

Mr. DODDS: On occasion there are sleeper trucks, but the majority of them are not.

Senator PEARSON: Could this not be made a regulation?

Mr. DODDS: I presume this could.

Senator POWER: Did I understand the witness to say that truckers, other than owner-drivers, sometimes are forced by the trucking concern to work 30 hours straight?

Mr. DODDS: No, I was speaking of owner-operators. They are contractors. The minimum is 10 hours, within our contract.

Senator POWER: That is, under your labour contract?

Mr. DODDS: Yes.

The CHAIRMAN: Is that the minimum or the maximum?

Mr. DODDS: That is the maximum, but the point is this, that we are 20 years behind the times. We are trying to compete with an operation—we are doing the same job as they are doing in the United States where they get eleven cents a mile and we get only seven cents a mile. These things are the livelihood of our people. We have to take all these things into consideration.

Senator CROLL: Mr. Dodds, the minimum wage in the United States is not any better than a dollar and a quarter.

Mr. DODDS: I am proud of the dollar and a quarter.

Senator CROLL: We are not so far away from them.

Mr. DODDS: Mileage-wise, we are.

Senator CROLL: Perhaps we are there. Maybe we do not do the same things as they do, but we have to get this in perspective. I do not know how

far we are behind them in other items, but we are not behind them in regard to the minimum wage.

Mr. DODDS: No, not in regard to the minimum wage.

The CHAIRMAN: Mr. Dodds' chief point was the hours of work. He was addressing himself to that.

Senator CROLL: Is there anything Mr. Dodds would like to say that he has not said—anything at all—with respect to this presentation?

Mr. DODDS: I should like to consult with my associate, because he works in the industry.

Mr. McDOUGALL: Perhaps I could say that our main point in presenting this case is that it refers to the broker-operator, the owner-operator or the lease-operator. There are three different names, but they are all the same. As you know, we have drivers organized within our organization. Drivers who work for companies are organized, but we are concerned about the owner-operator or the lease-operator, and one of the things we are concerned about is the number of hours he has been allowed to drive in the past as compared to the number of hours that an organized driver is allowed to drive. Bill C-126 does not cover these owner or lease-operators. Such a man is going to be able to continue to drive from Vancouver to Toronto, or to anywhere else, and not come under the provisions of this bill. Any other fleet owner, regardless of whether he is organized or not, will not come under the provisions of Bill C-126, and therefore he is in a competitive position. We must certainly think of all the people we have organized.

Senator CROLL: Does he amount to anything competitively? What percentage of the industry does he fill?

Mr. McDOUGALL: He does in the east-west operation. I can safely say that not 15 per cent of the trucks that operate between Montreal and Vancouver belong to a fleet. They have fleet names on them. They have fleet licences, but the guy that drives the truck is the owner of it. He has what we refer to as a co-pilot with him, but—

Senator CROLL: He obtains a licence in either British Columbia or Ontario in his own name?

Mr. McDOUGALL: No, he has to have this truck in the name of the fleet owner. For example, Gill Interprovincial Transport operate out of Vancouver to Toronto, and it has a fleet of approximately 48 trucks of this kind. Gill Interprovincial owns three of those trucks; all the rest are owned by owner-operators. PIX, which is—

Senator CROLL: Yes, I know them.

Mr. McDOUGALL: PIX is another one that does not own one power unit at all.

Senator CROLL: To all intents and purposes you are talking of a co-operative organization. The licence is in his own name, and they share common costs?

Mr. McDOUGALL: No, sir, under the P.C.V. Act of Ontario you must show just cause for requiring a licence.

Senator CROLL: You're telling me. However, go ahead.

Mr. McDOUGALL: A company can hire an owner-operator, paint the truck in its colours and put its name on it, and operate that truck under the name of, say, Hume Transport. That truck to all intents and purposes belongs to Hume Transport, but it does not belong to Hume Transport. For \$1 I can buy the truck and change the name to Hume Transport. The operator operates it under a name of Hume Transport, and under Hume Transport's insurance and P.C.V. licence, but he cannot get a P.C.V. licence to operate that truck himself.

Senator THORVALDSON: I think there is a point of order here, Mr. Chairman. This is far and away beyond anything that is referred to in this bill.

The CHAIRMAN: Except this.—

Senator THORVALDSON: I would just like to continue with this. A lot of names have been mentioned. People are being criticized before this committee. If what was said is within the terms of this bill then it would be quite appropriate, but to allow people to come here and go far beyond our terms of reference in respect of this bill is improper, and should not be allowed.

Mr. McDougall: Mr. Chairman, I am sorry if the senator took what he did from my remarks. I mentioned those names because they are companies I know which are operating in that way. I did not mean it to be critical.

Senator CROLL: I was not asking for names. I am trying to ascertain the method of operation, and that is part and parcel of this bill. Are you saying that company X in Ontario will have a licence for 50 trucks—a blank licence?

Mr. McDougall: Yes sir, they could have.

Senator CROLL: And I as an individual could go to that company, take a truck in there and operate it?

Mr. McDougall: Yes, under their P.C.V. licence.

Senator CROLL: They have a licence, and I pay them a certain amount, perhaps, for the use of the P.C.V. licence—or do I?

Mr. McDougall: No, I will explain it in this way; the fleet owner gets the P.C.V. licence, and he then adds to his fleet. He may get the licence for three trucks, and end up with three hundred. His P.C.V. licence would enlarge with his business. I as an individual can buy a truck, take it to this employer and put it to work for him. I must haul his freight. I cannot haul my own. I must haul on his regular run, and he pays me to operate my truck although my truck is in his name and in his colours.

Senator CROLL: That is one method. Is there another method by which I can obtain a P.C.V. licence and operate a truck myself?

Mr. McDougall: Not within Canada. This could happen in some parts of the United States, but not within Canada.

The CHAIRMAN: The simple point is that this would appear to establish an employer-employee relationship. If it does then it comes under the bill.

Senator CROLL: But it is not. As a matter of fact, it is not an employer-employee relationship.

Mr. McDougall: I might say that both the Ontario and federal Departments of Labour have refused to acknowledge these people as employees.

Senator McCutcheon: They are independent contractors.

Senator CROLL: Yes, and he knows this business so thoroughly tells us something today that is new to me, namely, that a man can obtain a licence for any number of trucks and then sort of peddle it out to others who actually own the trucks and carry his business.

Mr. McDougall: I can clarify that by saying that he must show just cause when he makes his application. We have one particular operator in the province of Ontario who has 86 power units working for him and he does not own any of them, but he has the original licence.

Senator McCutcheon: That is a problem for the province of Ontario.

Senator Walker: Would I be correct in assuming that this is a licence granted by the Highway Transport Board?

Mr. McDougall: Under the present legislation it may be—it may come under their jurisdiction, but the feeling we have and one we are concerned

with is the long-haul operation across Canada where there is more than one operator involved.

Senator ISNOR: I want to ask a question in regard to the statement as to operations in the East. There is no such operation as you described in the Maritime Provinces. They are owned and operated by firms, well-known firms and there is certainly none of the things going on such as you mentioned.

Mr. McDougall: I can recall one that runs up from Ontario. How many run from the East up, I don't know—Maritime Express.

Senator ISNOR: I want to take exception to that statement.

The CHAIRMAN: Just because a question is asked, it does not mean that it must be answered. It has to have some relevancy. We have examined the subject, and we finally conclude that the facts as related do not point to an employer-employee relationship. Once we are through with that it is the end of the subject because this bill concerns itself with employer-employee.

Senator ROEBUCK: There just remains one point, Mr. Chairman. Has this witness any suggestion to make for the amendment of the bill or a change in the bill within our jurisdiction, which is interprovincial only, and with respect to employers?

Mr. DODDS: I would like to suggest one thing and that is this—where there is an operator—take in the case like company X who is in operation and where we have been certified as having the bargaining rights for these people, then where there is this employer-employee relationship, I think they should be called employees and should come under the Act. As far as the Act itself is concerned I have no criticism of it. I hope I did not leave any other impression.

The CHAIRMAN: There is nothing else you wish to say?

Mr. DODDS: Thank you very much, gentlemen, for allowing us to appear before you.

The CHAIRMAN: We have a telegram here, quite a lengthy one from Leopold Langlois on behalf of the St. Lawrence Shipowners Association. Do you wish me to read it to you?

Senator CROLL: He is an ex-member of the Parliament of Canada. I think you better read it.

The CHAIRMAN: It is addressed to the Leader of the Senate, the Honourable Senator John J. Connolly, and reads:

Our Association wishes to respectfully voice its strong opposition to Bill C-126 Canada Labour Standards Code as passed by House of Commons on February 22 last and presently under consideration by your committee. Our Association represents owners of over 100 vessels plying exclusively in Canada coastal trade on the Great Lakes and the East Coast of Canada and mostly between ports of the St. Lawrence River. These vessels are of the coaster type and consequently of much smaller dimensions than lakes or canalers. Although these vessels generally operate on a seasonal basis approximately 25 per cent of them do operate on a year round basis and for these latter there is an absolute impossibility of averaging hours of work over a period longer than the regular navigation season. The crews live on board these vessels and are recruited mostly within the Province of Quebec. There is actually a very acute shortage of certificated deck and engine room personnel and owners have to financially support the training of such personnel with consequent result absolutely impossible to obtain qualified personnel if crews have to be increased to meet requirements of new legislation. Modern equipment and machinery require qualified and trained personnel. Owing to limited carriage capacity of vessels and consequent relatively small earnings derived from their operation it is anticipated that the increased cost

resulting from application of contemplated legislation will almost double present cost of operation. Our vessels are competing with vessels of foreign registry permitted to operate in our coastal trade and with other means of transportation falling under provincial legislative authority such as provincial trucking, provincial railroad, provincial ferries in receipt of subsidies from governments, etc. . . . which means of transportation will not be affected by the passing of Bill C-126 with the result that our industry will be put to a very obvious disadvantage. Irrespective of prohibitive high cost of operation actual dimensions of vessels make it absolutely impossible to accommodate larger crews on board same. Since vessels must operate 7 days of the week it is absolutely impossible to contemplate restricting hours of work which restrictions would adversely affect not only owners but employees as well. For all the above reasons and many others which need not be enumerated here and which have been placed before your committee by other representatives of shipping industry our association submits that the new legislation should not be made applicable to the shipping industry which legislation will surely cause the nucleus of merchant marine existing in Canada to disappear.

Leopold Langlois, Q.C.,

St. Lawrence Shipowners Association Inc.,

L'Association des Propriétaires de navires du St-Laurent Inc.

Senator ROEBUCK: Mr. Chairman, is it not a fact that this bill will apply to foreign shipping just as much as it does to local Canadian shipping? If foreign shipping operates within Canada they must comply with this legislation regarding hours of labour.

The CHAIRMAN: I think he is referring to vessels having one base in Canadian coastal trade, and having another base maybe in the United States or maybe in Europe.

Senator ROEBUCK: Well then he ought to make his protest to the other jurisdiction and not to us. We are doing the best we can for our own jurisdiction. He is wrong to suggest that the legislation will not apply to his competitors when they are operating within Canadian jurisdiction.

Senator CHOQUETTE: Have we any telegrams, Mr. Chairman, or briefs praising this Act, and saying how applicable it will be to serve industries?

The CHAIRMAN: Well, usually whenever we have a hearing, we deal with those who are dissatisfied. We very seldom have those who are satisfied appearing before us.

Senator THORVALDSON: Before you leave the telegram might I ask a question? I want to ask, as a matter of information, regarding Senator Roebuck's statement. He may be right; I was not aware that this Act could apply to foreign shippers, to such vessels as are flying the Venezulean flag or the Greek flag and ply up and down the St. Lawrence. Does it or does it not apply to such vessels?

The CHAIRMAN: That was Senator Roebuck's statement. I was not called upon to make a decision as Chairman.

Senator THORVALDSON: It is an important point, because the answer to that could certainly affect my judgment in regard to the matter and Canadian shipping interests including the people who sent that telegram.

Senator ROEBUCK: I have expressed my opinion. The law clerk may have his.

Senator HUGESSEN: I find it difficult in reading the bill to say exactly to what shipping it does refer. Clause 3, section 1, subsection (a) says:

any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime,

including the operation of ships and transportation by ship anywhere in Canada,

and then at subsection (c)

any line of steam or other ships connecting a province with any other or others of the provinces, or extending beyond the limits of a province,—

I was wondering in connection with the telegrams that you read whether this bill would apply to ships plying between, say, Montreal and Quebec, that is, wholly within one province.

Senator THORVALDSON: On that point my recollection is that the people who appeared before us suggested that the Act would not apply to vessels plying between Montreal and Quebec. I may be wrong in that, but it will be good to know.

Senator HUGESSEN: It seems to me that the great bulk of the telegrams which we heard this afternoon deal with these vessels coming up and down the St. Lawrence.

The CHAIRMAN: If you look at clause 3 which deals with the application of the Act you will see that it applies to

... and in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, etc.

and then if you look at subsection (a) it says:

any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,

Senator HUGESSEN: What is the application of paragraph (c) then?

The CHAIRMAN: When we were going over these parts of the bill with Mr. Cushing, it was agreed that there may be some duplication in language. They have followed the text of paragraphs that have been approved in certain court cases, even though they involve some duplication. It could well be that in (c) you have a duplication of part of what is in (a).

Senator HUGESSEN: Then you might have a duplication in (d) also. It refers to "any ferry between any province and any other province or between any province and any country other than Canada". Does it not refer to a ferry internally within a province?

The CHAIRMAN: I would think that navigable waters are the subject of federal jurisdiction in all aspects. It is a special item, and navigation is certainly correlated to navigable waters.

Senator PEARSON: Are foreign vessels subject to our Shipping Act allowed to travel in coastwise trade?

The CHAIRMAN: Under the Shipping Act, if you remember, we had some amendments before us, which are now over in the Commons. Our shipping law, as I understand it, before that bill becomes law, only permits ships on the Canadian registry and ships on British registry in the coastal waters. The foreign ships, without paying any regard to that provision of the Shipping Act, can move from points in Canada and take cargoes out, but not between two points in Canada.

Senator PEARSON: Your suggestion is that they would be subject to this act.

The CHAIRMAN: I do not know why I should be expressing these opinions. You have said I say they would be subject. I am very doubtful that they would. If they are carrying from a point in Canada to some point in Europe—

Senator BURCHILL: Was not there a suggestion by the Shipping Association that if this bill applied to them they would have to change their registry of their ships to some other nation?

The CHAIRMAN: We have one other submission. It is of a different kind, in the sense that it comes in the form of a communication. It is from the Howard, Cate law firm in Montreal and is signed by Paul Renault. Attached to this communication are two letters to which he refers. Is it in order that we append these to the record of proceedings? Copies are being distributed to each member of the committee now.

Hon. SENATORS: Agreed.

(For letters, see appendix "B")

The CHAIRMAN: Honourable senators, we had reached section 15 and were getting explanations from Mr. Cushing and his assistants. I suggest we go through the remainder.

Who have sent a message to the minister and we shall be ready for him at 5 o'clock.

Mr. H. S. Johnstone, Director, Labour Standards Branch, Department of Labour: Part III deals with annual vacations and it is substantially the same as the Annual Vacations Act which this bill will repeal. However, there is an exception, in that in the present Annual Vacations Act the vacation is one week after one year of employment and two weeks after two years employment. In this bill, Part III, it is two weeks after one year of employment. The section is shorter because the application section of the existing Annual Vacations Act is incorporated in the front of this bill.

The CHAIRMAN: We come now to Part IV, general holidays.

Mr. JOHNSTONE: This establishes eight named holidays on which, if the employee works, he is paid a premium rate of time and a half his regular rate, in addition to his normal pay. There are also certain provisions where substitutions can be made; and we could discuss these when we go over them clause by clause.

The CHAIRMAN: Clause 24 deals with definitions.

Mr. JOHNSTONE: That is right.

The CHAIRMAN: Clause 25 is the entitlement to these holidays. Clause 26 deals with a general holiday falling on a day off.

Mr. JOHNSTONE: In that case the employee is entitled to and shall be granted a holiday with pay, at some other time, which may be by way of addition to his annual vacation or which may be granted as a holiday at a time convenient to employee and employer.

The CHAIRMAN: Clause 27 is simply an exemption where there are different provisions in a collective bargaining agreement?

Mr. JOHNSTONE: Yes. Where the collective agreement provides at least eight holidays with pay, section 26 does not apply.

Senator CROLL: We are not insistent on that particular day. If in the course of the negotiated agreement Christmas is not a day in which he receives a holiday, then it makes no difference to us, under the bill, as long as he gets the eight days?

Mr. JOHNSTONE: Yes, that is the general idea.

The CHAIRMAN: The bill does not designate the particular eight days?

Senator CROLL: That is what I am saying. It is the eight days—that is the main thing.

Mr. JOHNSTONE: The bill designates the eight days.

Senator CHOQUETTE: The bill designates the eight days but let us say his two weeks' vacation includes Labour Day, he will be allowed that day at some other time.

Mr. JOHNSTONE: The collective agreement may designate eight or nine or ten days. In that case the terms of the collective agreement can prevail.

Senator CHOQUETTE: But you have eight statutory days.

The CHAIRMAN: On page 2 of the bill, subparagraph (f) gives a list of eight days as general holidays. Section 28 appears to deal with substituted holidays. I think you spoke about that a few minutes ago.

Mr. JOHNSTONE: Yes.

Senator PEARSON: Can the employee make arrangements to have the whole of the eight days included with his two weeks vacation, or does the company reserve the right to say that this is a statutory holiday today and he must take it today?

Miss LORENTSEN: There is no provision, sir, for a particular holiday. Eight days are named, and there is provision for substituting other days, but there are certain days in each establishment that would be observed as statutory holidays, and I do not think that postponement of one of these is at the discretion of an employee.

Senator BLOIS: Would that not be by agreement of the employee and his employer?

The CHAIRMAN: Yes, that is the provision in the bill; that is, that a collective bargaining agreement between an employee and employer may provide for this so-called general holiday, which may not include some of these holidays, but unless there is working going on in a plant on a general holiday it would not be reasonable to expect that the employee would want to go into the plant one day and have a holiday another day.

Senator BLOIS: I agree.

The CHAIRMAN: Now section 29.

Mr. JOHNSTONE: That is to ensure that the employee has the advantage of this general holiday, whether his wages are calculated weekly or monthly.

The CHAIRMAN: If he is paid on a monthly basis and a general holiday occurs in the month he gets his full monthly pay?

Mr. JOHNSTONE: Yes.

Senator KINLEY: If an employee earns some more money in the week by way of overtime that is not figured in the holidays with pay. I think the provision is a normal working day?

Mr. JOHNSTONE: That is right. He gets credit for the normal wage.

Senator KINLEY: There is usually a provision in an agreement that he will work the day before and the day after a holiday. I can see the reason for that. Is that in the bill; I do not think it is? It says he has to have 15 working days in the month to qualify for his holidays.

Mr. JOHNSTONE: There is a qualifying section, namely, section 33.

The CHAIRMAN: Which deals with the point you are raising, senator.

Now, section 30 deals with additional pay if he works on a general holiday.

Mr. JOHNSTONE: That is right.

The CHAIRMAN: Section 31?

Mr. JOHNSTONE: Section 31 provides an option. If an employee is on a continuous operation there are two options there. If he is required to work he may be paid in addition his regular rate of wages for that day, and the

rate of this equal to $1\frac{1}{2}$ times, or be given a holiday with pay on some other day.

The CHAIRMAN: He gets regular pay and also gets additional pay of time and a half?

Mr. JOHNSTONE: If he works; or he may elect to take a holiday with pay at some other time.

Senator BLOIS: I am not clear on that. He would still get a day and a half additional pay for that holiday, and a full day's pay later?

The CHAIRMAN: No, a full day's pay for the general holiday if he works, and also he would get time and a half for having worked on the general holiday; or he may elect in lieu of that pay at time and a half.

Senator BLOIS: And he does not get additional pay?

The CHAIRMAN: He gets straight time pay.

Senator BLOIS: He gets straight time pay, but not time and a half?

The CHAIRMAN: That is right. Now section 32.

Mr. JOHNSTONE: That is a standard provision.

The CHAIRMAN: Section 33 is the one I referred you to, Senator Kinley, and I think it is clear now.

Section 34 deals with holidays during the first 30 days of employment.

Mr. JOHNSTONE: He must be in employment for 30 days before qualifying for holidays with pay.

Senator KINLEY: What about Sunday work, is that differentiated from other holidays?

Mr. JOHNSTONE: No.

Senator KINLEY: Usually they get double pay on Sundays.

Mr. JOHNSTONE: Yes, under some collective agreements.

Senator KINLEY: Under most of them.

Mr. JOHNSTONE: But overtime here is not tied to Sunday and Saturday, but to a certain number of hours in the week.

Senator KINLEY: The company agreement is better than this, and he can add this if he wants to.

Mr. JOHNSTONE: Oh, yes, some company agreements are better than this.

The CHAIRMAN: Now Part V, which deals first with section 35, which provides for setting up a commission of inquiry, to deal with these situations arising under section 51. Section 36 is simply for the provision of inspectors and their powers. Are there any questions?

Senator HUGESSEN: Mr. Chairman, section 35 is action taken by the minister alone?

The CHAIRMAN: That is right.

Senator HUGESSEN: So that when you come to subsection 1 of section 51, which has the 18-month limitation, in that case somebody has to make a submission to the minister to be exempted for that period of 18 months?

Mr. JOHNSTONE: Any person.

Senator HUGESSEN: When it comes to subsection 2, a more lengthy provision, it is a matter which is solely within the discretion of the minister whether he will, first of all, set up an inquiry and, secondly, having had the inquiry and received the report he will take any action on it?

The CHAIRMAN: That is right.

Senator HUGESSEN: That is the mechanics, is it?

Mr. JOHNSTONE: Well, the inquiry is under subsection 2—yes. The original deferment under subsection 1, of course, is within the discretion of the minister.

Senator HUGESSEN: Yes, but there has to be an application by somebody to the minister?

Mr. JOHNSTONE: That is right.

The CHAIRMAN: The only way you can get an inquiry, the minister may authorize the setting up of an inquiry, and then subsection 2 of section 51 gets a chance to operate.

We were at section 36, enumerating the powers of inspectors. They seem to be standard.

Mr. JOHNSTONE: Fairly standard.

The CHAIRMAN: Section 37, administering oaths. That is pretty standard. Section 38?

Mr. JOHNSTONE: That is recovery.

The CHAIRMAN: It provides for recovery where the inspector's report that the law has not been complied with?

Mr. JOHNSTONE: That is right.

The CHAIRMAN: Section 39 provides for information and returns, and that is standard, is it not?

Mr. JOHNSTONE: Fairly, yes. We have to know what is going on under the legislation, and that requires the reporting to be done.

The CHAIRMAN: Section 40 enables the minister to require information.

Mr. JOHNSTONE: It is procedure requiring specific information.

The CHAIRMAN: Section 41?

Mr. JOHNSTONE: Well, that is to make sure that the employee knows the manner in which his wage bill is made up, the way in which his wage payments are made up.

The CHAIRMAN: He has to be furnished with a statement?

Mr. JOHNSTONE: Yes, usually it is on half of the cheque.

The CHAIRMAN: Section 42 deals with offences and penalties. Any questions on that? If not, we will pass on to section 43, which is simply procedural.

Section 44 provides a time limit within which any such proceeding may be taken.

Section 45, Mr. Johnstone, appears to deal with the situation that if an employee is convicted of an offence in not paying what he should have in accordance with the requirements of the act, this deals with a method by which the employer can be obliged to pay the money back to the employee.

Mr. JOHNSTONE: That is right.

The CHAIRMAN: Section 46.

Mr. JOHNSTONE: That is to protect an employee who makes a complaint to the minister and asks that his name be withheld.

The CHAIRMAN: Section 47. I see that section 47 suspends any civil remedy of an employee against his employer for arrears of wages.

Mr. JOHNSTONE: No, the opposite.

The CHAIRMAN: No, no. That is what startled me, that that would be done.

No civil remedy of an employee against his employer for arrears of wages is suspended or affected by this Act.

Section 48, Ministerial Orders. What is the significance of this?

Mr. JOHNSTONE: If the minister decides to make an order under the act or the regulations, that can be made with respect to a specific matter or applied generally.

The CHAIRMAN: Section 49 provides for the minister's reporting to Parliament; and section 50 provides for enactment of regulations?

Mr. JOHNSTONE: Yes.

The CHAIRMAN: Then we come to section 51, which I think the only other important section here. Would you just explain that, please?

Mr. JOHNSTONE: Under section 51, which relates solely to Part I of the act—that is the Hours of work part of the act—any person can make a submission to the minister, and if he can show the minister that the application of the hours of work provisions of the act would be unduly prejudicial to the employees or would be seriously detrimental to the operation of the federal work, undertaking or business, the minister may defer or suspend the operation of Part I—that is the Hours of Work part—with respect to the undertaking for a period of up to 18 months. They use the words “suspend or defer” on the advice of the legal officials. If the act comes into effect, then obviously you cannot defer it but you may suspend it. But before the act comes into effect, if the order is given, then you are deferring it, so they use the phrase “defer or suspend” to take care of both situations.

Senator PEARSON: In clause 1, it reads:

Where upon the submission of any person . . .

What does it mean by “any person”?

Mr. JOHNSTONE: Just what it says, any employer or employee or any association.

Senator PEARSON: An employer or employee or anybody outside of that?

Mr. JOHNSTONE: Any person.

The CHAIRMAN: It would have to be some person affected by the provisions of the bill.

Senator BLOIS: Yes, but this does not say that.

Senator POWER: Could any person in a union, say, make this inquiry of the minister?

The CHAIRMAN: I think it is completely general.

Mr. JOHNSTONE: Yes, it is completely general. The submission, of course, would have to convince the minister, and if it were frivolous or inconsequential he would so decide.

Senator PEARSON: Wouldn't it be better to say who the person is?

Mr. JOHNSTONE: You could not do that very well. We did not want to limit that in any way.

The CHAIRMAN: In practice it is quite likely such submissions would be made by the employer or employee or a union.

Mr. JOHNSTONE: Or an association of employers.

The CHAIRMAN: Yes, or an association of employers.

Senator BURCHILL: Is it entirely at the discretion of the minister though?

Mr. JOHNSTONE: Yes, they would have to establish their case.

The CHAIRMAN: Subsection 2 is the other half of this deferment and suspension which must be preceded by a board of inquiry, where the circumstances are put forward which appear in (a) and (b) of subsection 2, at the top of page 20. If you have these circumstances, then the minister sets up a board of inquiry and receives a report from that board. Then:

the Governor in Council, on the recommendation of the Minister, may by order defer or suspend—

Mr. JOHNSTONE: The order may contain certain things. The order may prescribe other hours, and it may prescribe the term of the suspension or deferment.

The CHAIRMAN: And there is no limit on the length of time of the suspension?

Mr. JOHNSTONE: No, except the limit contained in the order.

The CHAIRMAN: And notwithstanding any limit that may be invoked on subsection 2:

(5) The Governor in Council, upon the recommendation of the Minister, may, from time to time, by order, amend or revoke an order made under subsection (2) if it is made to appear from a report of an inquiry held pursuant to section 35 that it is in the public interest, or in the interest of any class of employees, to do so.

So, again it must be preceded by a report of an inquiry.

Senator POWER: That deferment cannot be made for more than 18 months, unless an inquiry has been made and a report made of that inquiry to the minister?

The CHAIRMAN: That is correct.

Senator POWER: Then the minister must follow the recommendation, I presume, of the person who made the inquiry.

The CHAIRMAN: No.

Mr. JOHNSTONE: No.

Senator POWER: I just want to know about that. Would the minister make a recommendation to the Governor in Council that he defers or suspends the operation, whether or not the inquiry is favourable?

The CHAIRMAN: It says:

The Governor in Council, upon the recommendation of the Minister—

But the report of the board of inquiry must disclose certain things. In subsection 2 it says:

Where it is made to appear—

Senator POWER: He could have a really tough time if he wanted to make a recommendation contrary to the report of the board of inquiry.

The CHAIRMAN: If he refuses to make a decision in line with the decision of the board of inquiry, I think that he would have some unfavourable exposure.

Mr. JOHNSTONE: And he would be called upon to defend his position.

Senator WALKER: I presume subsection 2 would cover the railway people, the shipping people and truckers?

The CHAIRMAN: Yes.

Senator WALKER: "Federal work", what does that include?

Mr. JOHNSTONE: Everything covered by the Act.

I would like to direct your attention to the opening three lines in subsection 3:

An order made under subsection (1)—

—that is the order covering the initial period of deferment or suspension up to 18 months—

may, and an order under subsection (2) shall prescribe the hours of work that shall—

—prevail. So that in the initial deferment order it is not necessary to prescribe the other hours, but in the suspension or deferment after the inquiry the order must contain provisions concerning hours.

The CHAIRMAN: Section 52.

Mr. JOHNSTONE: That deals with the minimum wage provisions, and the submission, again, can be made by any person. The submission should show that the application of the minimum wage will prejudice the interests of the employees or be detrimental to the operation of the business, and:

the minister may by order defer the operation of section 11 in respect of that federal work, undertaking or business or that class of employees therein to the 1st day of January, 1967 or to such earlier day as may be fixed in the order.

The CHAIRMAN: If you will recall, we had some evidence the other day from the Canadian National Railways in connection with their hotels—that is, the hotels that are operated directly by them—that they would be subject to the minimum wage provisions here, whereas their competitors would not be subject—even the C.P.R. hotels.

Reference was made to section 51 and to its availability to assist in this situation, but I should point out that even under section 52 I suppose a condition in a city where you had a C.N.R. hotel operated by the C.N.R. and a C.P.R. hotel operated, that those would be operations in a local area where there would be an unfavourable competitive situation, and an application could be made under section 52 which could extend the time or defer the application of the Act until the 1st day of January, 1967. That would appear to be another place where that C.N.R. hotel picture might work in.

Mr. JOHNSTONE: Section 52, as the chairman has noted, is restricted to:

federal work, undertaking or business organized and operated in a local area.

It has not quite the wide application of section 51.

Senator HUGESSEN: One wonders whether that would apply if the C.N.R. made a general application covering all their hotels. They could not do that under section 52.

The CHAIRMAN: They would have to make it in each area.

Senator HUGESSEN: Yes.

The CHAIRMAN: Any questions on that?

SENATOR KINLEY: It says on page 21:

and no employer of any employee in respect of whom the order applies shall pay such employee a wage at a rate that is less than the minimum rate of wages specified in the order in respect of such employee.

That rate cannot go below \$1.25. They have no control over anything but the minimum rates do they? They do not control anything but the minimum rates?

The CHAIRMAN: No, the order provides for the minimum rate that shall apply during the period of deferment, and that minimum rate obviously would not be the minimum rate in this bill. It would be something else.

Senator KINLEY: That is it, but the question is that different classes of men get different pay. This bill is committed to the dollar and a quarter. It controls the minimum rate in Canada. Under a Government contract you contract to pay fair wage rates. That is outside this bill altogether.

The CHAIRMAN: That is right.

Senator KINLEY: This bill means that the lowest paid man gets a dollar and a quarter.

The CHAIRMAN: Unless you can get a deferment.

Senator KINLEY: Yes.

The CHAIRMAN: Section 53?

Mr. JOHNSTONE: That is making public in the *Canada Gazette* the submissions for orders.

The CHAIRMAN: Yes, this answers a question that was asked earlier, because these submissions that are made under sections 51 and 52 have to be published in the *Canada Gazette*.

Senator POWER: Do you have to give the reasons for deferment? It does not say.

Mr. JOHNSTONE: No, it does not say.

Senator POWER: It says "a list of such submissions for orders". You do not know whether they are granted or not?

Mr. JOHNSTONE: No. I think it is just a list.

Senator POWER: A list of the submissions, whether they are granted or not.

The CHAIRMAN: Yes, but later on, if the submission is rejected, then the minister is obligated to publish in the *Canada Gazette*.

Senator POWER: Yes.

The CHAIRMAN: Then, of course, section 54 is the coming into force of the act.

Mr. JOHNSTONE: Parts I. II. III and IV. Part V comes into effect as soon as it is proclaimed.

Senator BURCHILL: Before you stop, Mr. Chairman, may I ask a question with respect to section 4?

The CHAIRMAN: Yes.

Senator BURCHILL: The latter of section 4 reads:

...but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

Now, who determines that?

The CHAIRMAN: Well I would say that any person who is affected by the act and who feels that clause 4 may have some application to him, either one way or another—I would expect he would get legal advice.

Senator BURCHILL: That is right; he would have to go to the courts.

The CHAIRMAN: You would have to get legal advice and take your course accordingly. If there was a contest I suppose it would end up in the courts. But, you know, you are never going to be able to legislate in a way that matters will not get before the courts unless you specifically say that. Is not that right, Senator Walker?

Senator WALKER: That is right.

Mr. JOHNSTONE: This is a standard clause that is in most labour legislation.

The CHAIRMAN: My suggestion is that the committee now stand adjourned until 5 o'clock when the minister will attend.

The committee adjourned until 5 p.m.

Upon resuming at 5 p.m.

The CHAIRMAN: The meeting will come to order. We have the Minister here, and I think he has a very short statement to make and then we will be ready for questions.

Honourable Allan J. MacEachen, Minister of Labour: Mr. Chairman, honourable senators, I appreciate the opportunity to come before this committee to support the Canada Labour Code, and to answer any questions I can with regard to the provisions of the bill.

My experience, working through this bill in the House of Commons and elsewhere, has been that the main area of concern with respect to the bill is part 1 which deals with hours of work. There have, of course, been questions raised in connection with the other three main parts of the bill also, but the main concern has been with respect to the hours of work, and I would like, if I may, to make a brief opening statement with respect to that section and then carry on from there.

The briefs that you have heard, and which I have heard earlier, have been along the lines or representations already made to members of the Cabinet and to other members of the House of Commons shortly after the bill had been introduced in its original form.

Senator McCutcheon: What do you mean "to other members of the House of Commons?" I understand this bill didn't go to a committee there.

Hon. Mr. MacEachen: There has been representations made to individual members. It was because of arguments presented in these briefs, and because of discussions which I held with a great number of representatives of industry in Ottawa and elsewhere in Canada that a proposal was made to change clause 51 and to put it in its present form. Clause 51 has been referred to on a number of occasions, and I think it has been referred to before this committee as simply an "escape hatch." I would like to emphasize that clause 51 is an integral part of the system of regulations in the bill as passed by the House of Commons.

The general rules in regard to hours of work are set out in clauses 5 to 10, but clause 51 is just as important a part of the bill in that it provides essentially for the setting of standards in cases where any employment considerations peculiar to an industry makes application of part 1 inappropriate. Thus clause 51 deals with the nature of operating conditions in certain federal industries. Because it has been recognized that to require employers and employees in these industries to comply with a fixed general standard on the date on which part 1 will come into force will be unduly disturbing in its effect, clause 51 will operate to permit the setting up of reasonable standards on a progressive basis with a view of reduction of hours of work as conditions permit. In some cases such as shipping the standard imposed may be one which will not be subject to change for some time and maybe not at all. In any case, no change will be made in hour standards without the holding of an inquiry.

This is the only practical way of dealing with the main concern. It may be possible in time to incorporate hours of work standards for different industries in the legislation. It is certainly not possible to do so at the moment without danger of overlooking important circumstances, and without the possibility of adverse effects. Members of the committee will appreciate that all hours of work legislation provides for exceptions. The normal pattern is for an hours of work act to establish a general rule which can apply in the majority of establishments under the Act, and to provide for variations from these standards and circumstances where they do not fit. The system that is proposed in the bill is that in any case where an industry, or indeed, a person, comes forward, showing that the immediate application of the hours of work would be disturbing to the operation itself, or to the welfare of the employees, the minister may defer the operation of part 1 for a period of 18 months. This is really the only place in this connection where the minister is acting on his

own discretion, because it is then anticipated that where a submission has been favourably acted upon, under clause 51, that an inquiry would be established under clause 35, and it would be my expectation that we would ask an independent person, or persons, fair-minded persons, to conduct an inquiry, to hear evidence, and to hear all the parties and to reach conclusions or recommendations that will be made available to the minister, and from which the minister could draw a recommendation to the Governor in Council for a régime of hours that would operate upon the 18 month period. I can foresee a number of variations that might ensue from these recommendations.

Senator ROEBUCK: There is no limitation on the length of time that the Order in Council could defer for?

Hon. Mr. MACEachen: The order may fix the hours for any period. That is the real flexibility at this point. As you may have noted this clause was further amended in the House to ensure that no change could be made in this order by the Cabinet without a further inquiry, so that at the two points where what you might call a quasi permanent régime is to be established an inquiry must be held before a recommendation is drawn and presentation made to the Cabinet for an order.

I believe that this particular section is the main provision of flexibility in the bill with respect with hours. It provides an opportunity on the basis of facts disclosed for an independent inquiry to recommend a régime that is appropriate. That régime may be established by Order in Council and it cannot be changed without a further inquiry held in the same way. We did, on the basis of the many representations received, bring forward this particular solution to provide flexibility, and if I may say so, I think that a number of the briefs are somewhat dated that have come before the committee, in the sense that they have not taken into account the flexibility provided in the bill, and also in the sense that they are based on the assumption that the standard hours will come into effect absolutely and completely on July 1st, 1965. If that did happen, certainly some of the dire consequences foreseen in the bill might take place, but there is a system under clause 51, which is an integral part of the bill, to meet quite a number of difficulties raised.

Senator PEARSON: Do you anticipate many applications for deferment?

Hon. Mr. MACEachen: Yes, I anticipate certainly a number of applications. I think there will be 3 or 4 that one would expect almost automatically.

Senator BOUFFARD: Would you expect the hotel people to be one of these?

Hon. Mr. MACEachen: I had not anticipated the hotels would apply in connection with hours of work.

Senator McCutcheon: But in connection with wages?

Senator POWER: Do you foresee that in any specific industry this bill shall not ever apply with regard to, say, time?

Hon. Mr. MACEachen: I would not like to say "ever". The only operation where I can see physical disabilities in the application of the bill is the shipping industry.

Senator POWER: That is what I had in mind.

Hon. Mr. MACEachen: There may be changes that I cannot foresee that would make the hours applicable at a later time.

Senator McCutcheon: We have had representations from businesses which are bargaining with very strong unions. No one will suggest for a moment that the teamsters union is not a very strong and effective union. I think the minister will even agree that the S.I.U. was a strong and effective union, and that the representatives of the running trades of the railways were strong and effective unions. The representatives of the flight crews in the air transport

business were strong and effective unions. Where that situation exists, I would like to have the minister's views as to whether he would seriously object—and, if so, why—to the groups represented by the people I have mentioned being exempted completely from this bill. It is all very well to say that section 51 provides the flexibility, but section 51 provides flexibility subject to political pressure. The employer who is bargaining for years, who has built up a wage structure and a mode of payment, of which we have heard in the last few days, is now subject to the additional pressure, under which the union will say to the minister: "We want another hearing, we are not satisfied with the last board of inquiry, let us get another fair minded individual, or two or three fair minded individuals, to decide these things." The essence of this bill is really discretion as it applies in a number of these cases.

Hon. Mr. MACEACHEN: The first question is whether we ought not to exempt from the operation of the bill situations covered by collective bargaining.

Senator McCUTCHEON: No, no. I did not go quite that far. Situations where it has been represented to us—and at least has convinced me—that there would be very great difficulties; in fact, that exemptions will have to be granted, and where the people concerned are represented by strong collective bargaining units, why they should not be exempted in the bill, until we see how the rest of it works out.

Hon. Mr. MACEACHEN: This is something that I considered and I think that it certainly would introduce an element of discrimination against non-union employers. We would be asking non-union employers to accept a set of standards which by law we were not applying to unionized employers. In my judgment, this was the very sound reason for making the bill applicable in all situations, including union and non-union situations.

Senator McCUTCHEON: My suggestion to the minister is that that would not be the situation, that the representations which we have heard have been from groups where the whole industry, with perhaps minor exceptions, is bargaining with strong unions and has come to certain agreements, certain conclusions; and in none of those cases is there any question of the adequacy of wages. So I suggest there is no discrimination at all.

I am not talking about the parks' employees in the federal parks, I am not even talking about bank clerks. I am thinking of the running trades and the railroads, the flight crews, the employees on ships, the drivers employed by trucking companies in interprovincial traffic, and of elevator operators on grain elevators throughout the country. I could think of others also.

The CHAIRMAN: Were you asking the question whether the running trades should not be exempt because of the pattern of their work or was it because of the pattern of their work plus the fact that there were strong bargaining units representing them?

Senator McCUTCHEON: Both, Mr. Chairman. I think in every case I have cited they are both strong bargaining units and have a pattern of work.

Hon. Mr. MACEACHEN: My answer has to be the same. If the unionized situations were exempted from the provisions of the bill, then in quite a number of cases non-union employers would be expected to maintain standards that we were not asking union employers to observe. That is the reason why the bill applies in all situations. That is the reason. You may disagree with it, but that is the reason.

Senator McCUTCHEON: Then I will take back my suggestion that the fact that there are strong unions involved is of any relevance at all; and I have got back to patterns of work.

The CHAIRMAN: I thought that was where you would come back to.

Senator McCUTCHEON: I usually get back to your position, Mr. Chairman.

The CHAIRMAN: Do not say my position, rather say that this is the question.

Senator McCUTCHEON: What I say is happening here is that you are introducing legislation which in principle is like motherhood. People agree with it, but it is cutting through bargaining processes and collective agreements that have been built up over a long period of time. Let us say, we have heard of half a dozen special situations. It seems to me that you accomplish everything that you hope to accomplish if you leave those people out. It also seems to me that it is completely unfair to management in those industries to become subject to the hazard of one inquiry after another and an order in council exempting them, that may be revoked, particularly when many of them are subject to international competition, as in the field of air lines, truckers and possibly others.

Hon. Mr. MACEachen: I think I have listened more often, or as often, as any person to the views of the groups you have named, especially the truckers and the shipping industries.

Substantial employer groups have come forward and said "We approve the principles of this bill"—

Senator ROEBUCK: As applied to somebody else.

Hon. Mr. MACEachen: Then they have said "We find the hours of work part of your bill tough as it is now drafted."

Among those who made that claim were the truckers, both as individual organizations and in their associations. They said originally that they just could not consider getting their hours down. But there has been quite a change. I am not speaking officially for the trucking industry, but I have heard quite a number of trucking firm managers say, "Well, we think we can get the hours down—mind you, we think it might be a good idea, but we think it needs time." This is what this bill is giving them.

The Shipping Federation of British Columbia came before your committee and said, "We think we can live with this bill." Now, I am sure they would prefer not to have it, and that is understandable when their representatives told this committee that they could live with this bill and could get along with it.

Senator McCUTCHEON: Did the Great Lakes shippers tell you that?

Hon. Mr. MACEachen: No, they did not.

Senator McCUTCHEON: Did the running trades of the railways tell you that?

Hon. Mr. MACEachen: May I say a word about the running trades? The railway brief has stated that their system of hours and compensation is completely incompatible with the provisions of this bill. I think that is a matter of opinion. We believe that a system can be worked out to allow the railways to comply without disrupting their traditional system and that by applying the system of averaging we will meet their problem except in those cases, and there are some, where excessive hours are worked. We have a clause of the bill here on averaging which will allow us to make regulations. We are ready to sit down with the railways and really engage in serious discussions as to whether there is not a livable method of working out an average system to adjust to their mileage and hours compensation method. I think we can do it, but if not, there is other relief open to the running trades.

Senator McCUTCHEON: Let me put it another way, Mr. Minister. I do not think you feel that the running trades are poor people who are being ill treated, and so on. Why should it be necessary to sit down and work out these complicated arrangements with them? Why should we go to all this trouble and work? The same applies, of course, to flight crews on air transport. Why not exempt them?

The CHAIRMAN: You mean the status quo, senator?

Senator McCUTCHEON: No. The status quo will not have anything to do with it. After the next labour negotiation, we shall probably be giving bigger subsidies to the railways.

Hon. Mr. MACEachen: There is a problem with the running trades in respect to their hours. The truckers also have long hours. There are certain areas where I think this hours section will have a very beneficial effect. I think this is the argument against exception. I do not foresee any mass of paper work for inquiries. This is actually a very simple bill. It involves a submission asking for a deferment, then it involves presenting the facts for one inquiry and a subsequent order in council establishing a regime of hours. That is really not much pain and agony, and that is the only part of the bill that is going to involve this kind of difficulty, combined with the fact that in the total federal industries the numbers of industries involved will not be very great.

We thought at one time we might establish within the bill some kind of a permanent board to deal with this question. We decided against it, because we did not think there would be enough work to give the board and to keep it busy from time to time dealing with so few matters to deal with.

Senator McCUTCHEON: How many people do you expect to add to your department to administrate the provisions of this bill?

Hon. Mr. MACEachen: It will be in the thirties.

The CHAIRMAN: Mr. Minister, this would appear to be an orderly way of regarding the facts in relation to all the various industries that may be affected by the bill. I would think if you came to the end of the road, after having exhausted averaging and the deferment which you might grant up to 18 months, and the board of inquiry, and the suspensions, and there were still peculiarities and patterns in some of the industries, then you would have all the basic facts assembled, and that might be a more appropriate time to consider the question of exemption than at the beginning of the whole situation. That is how it appears to me. What do you think about that?

Hon. Mr. MACEachen: I think we are entering a new field as a federal government, in the regulation of hours. There is quite a diversity in the patterns of hours in our federal industries. Quite frankly we have learned a lot about the pattern of hours since we brought the bill into the house, and I think we shall learn a lot more. I certainly would hesitate today to suggest what the permanent conclusion ought to be for any operation until we have had the facts disclosed in the way of these inquiries, and also some experience.

Senator CROLL: When you speak about breaking new ground, Mr. Minister, to some extent you are breaking new ground. However, actually, in the provinces they have gone through this practice, not completely, of setting up standards within areas by order in council, and holding these inquiries in a small way, passing orders in council, revising them, and not upsetting industry in any way, for 20 years, in almost every province in Canada.

Hon. Mr. MACEachen: Yes.

Senator CROLL: So in many respects you are following the same procedure in a broader sense?

Hon. Mr. MACEachen: That is right, except that we are starting with the federal industries under federal jurisdiction.

Senator CROLL: Yes.

Senator THORVALDSON: I was going to ask another question later; but just to follow up the remarks of Senator Croll in regard to the experience of the provinces, I think Mr. Parker, President of the Manitoba Pool Elevators,

testified this afternoon to the committee that a bill had been passed in Saskatchewan a few years ago with relation to minimum wages, and so on, and that bill exempted elevator agencies as being managers. In other words, Mr. Parker's argument, and the argument of the grain people, is that it is quite impossible for them to live with this legislation in respect of their elevator managers. The exemption was made, apparently, in the Saskatchewan act. I was wondering what objection there would be to your providing a similar exemption under this act in regard to those employees. I am assuming, of course, that you are of the view, as many of this committee are, that something must be done about those employees, that they simply cannot live within the hours of work section of this act.

Hon. Mr. MACEachen: Senator, I certainly would not pose as an expert on the grain trade or elevator system in the west, but I have attempted to discuss the matter with quite a number of people in the trade and elsewhere. I have had a number of letters from operators of grain elevators in the west. There is no problem with respect to the wages, statutory holidays, vacations with pay. The only problem that has been raised is in connection with the hours of work, and the problem there is that the Canada Grain Act I think obliges the elevators to provide service at all reasonable times, or words to that effect.

Senator THORVALDSON: It also specifies that the elevator operators are not managers.

Hon. Mr. MACEachen: The problem here is that the elevators have to be open at certain peak periods, and hours in excess of the eight hours are worked, and at other times the elevators are not in business and the hours worked per day are very few. Operators of elevators have written to me and told me, "Some days we work 12 hours; other days we work three or four hours." The averaging system will certainly, in my view, look after that question.

I was very pleased to have the former Minister of Agriculture, Mr. Hamilton, in the House of Commons assure me that the eight-hour day could be applied to the grain elevators without any disruption to the services provided by the country elevators. I believe the averaging system will look after the hours. If it does not, I can give the assurance that we will provide relief so that the service to the farmers of the west will not be disturbed through the operation of these hours. However, I think they can meet the requirements of the bill through the averaging system, and I think it would be quite unwise to exempt the grain elevators when they are in a position to comply with a very progressive labour standard of this country and can carry that badge as a sign of good labour conditions in their operations.

Senator CROLL: "Liberal" standards, not "progressive"!

Senator THORVALDSON: I would like to say to the minister that the evidence that was given before this committee today was that in the case of these grain men—and we had a group of grain men before us who are pretty experienced in the business today—their expression to us is that the averaging system will not work for their industry. Now, if Mr. Hamilton has told you it is possible for the elevator companies and operators to live within the eight-hour day provision, then I must completely disagree with Mr. Hamilton. I am sure the gentlemen who were here today will disagree with him too.

The CHAIRMAN: Senator, you know the value you put on opinions today, so you are quoting some opinions now.

Senator THORVALDSON: My question to the minister was whether he would not consider exempting the elevator people completely from the operation of this act.

Hon. Mr. MACEachen: Mr. Chairman, I could not possibly recommend that the elevators be exempted.

Senator THORVALDSON: May I ask you something else, Mr. Minister, with regard to the shipping interests—and that was referred to a moment ago. In the first place, there was evidence given here by all the shipping interests who said no other country in the world had attempted to deal with their problems in the same way as this act does. I am assuming that is correct.

Hon. Mr. MACEachen: Well, I think the brief may have left that impression, the impression that no other country has legislated with regard to hours of work of seamen. That is not true.

Hon. Mr. MACEachen: Well, what is the truth?

Senator THORVALDSON: Yes, what is the truth?

Hon. Mr. MACEachen: That is a hard question to answer, but let me give you some contradictory evidence.

Many other countries have established hours of work standards for seamen by legislation. The eight-hour day was established in the United States Merchant Marine by the La Follette Seamen's Act of 1915. Sweden has had legislation dealing with hours of work of seamen since 1919.

Senator McCutcheon: What hours?

Hon. Mr. MACEachen: It provides an eight-hour day. The present legislation is The Seafarers Hours of Work Act of 1950. It establishes the eight-hour day and limits overtime work. Norway has an act of June 10, 1949, respecting hours of work on board ship.

Senator McCutcheon: Is that eight hours, seven days a week?

Hon. Mr. MACEachen: That was amended December 9, 1955. Here again the eight-hour day is established, and weekly hours are, in some cases, limited. The only point of argument is that other countries have taken action on the hours. It may be of assistance to the committee.

Senator McCutcheon: Well, I do not think it is of assistance unless we know the details. The fact is the American Merchant Marine would have disappeared except by reason of subsidy.

The CHAIRMAN: That really has been on account of rates of pay.

Senator McCutcheon: Probably on account of both, Mr. Chairman.

Senator THORVALDSON: Mr. Minister, is your belief, then, the shipping industry can live and compete with the shipping industry of other countries within this act?

Hon. Mr. MACEachen: Within this act, yes; within all the parts of the act, including clause 51 and clause 35.

Senator THORVALDSON: And consequently you are not willing to exempt the shipping industry from this act?

Senator CROLL: Yes, he will say that.

Hon. Mr. MACEachen: I am not willing to exempt the shipping industry from this act, but I have proposed provisions in the bill that will make it possible for the shipping industry to have its case heard fairly and to have a system of hours established, taking into account their circumstances, so as to avoid, as the clause says:

To avoid any serious detriment to the operation of the federal work, undertaking or business.

Senator THORVALDSON: Consequently, I take it it is common ground that you will become the judge of what is right for the shipping industry?

Hon. Mr. MACEachen: No, the only real element of discretion the minister has in connection with the hours of work is the 18-month deferment.

Senator THORVALDSON: That is what I am talking about. I think we ought to delineate that. In the first place, as I understand it, you are the only person who will have complete discretion as to what is done regarding this problem concerning the shipping industry during the first 18 months.

Hon. Mr. MACEachen: The shipping industry, presumably, will make a submission alleging:

... that the introduction of the standard hours of work ...

- (a) Would be or is unduly prejudicial to the interests of the employees therein or to any class of employees therein or
- (b) Would be or is seriously detrimental to the operation of the work itself. Then the minister has discretion.

Senator THORVALDSON: To whom will those recommendations be made, to the minister or the deputy minister?

Hon. Mr. MACEachen: They will be made to the minister. Naturally, as you know, any minister gets advice from his department officers. I think it is clear from the debates in the House of Commons, and from my attitude to this bill, that if there is a bill—and it may be presumptuous for me to anticipate what the Minister of Labour at the time the bill comes into effect will do, but my attitude is such that I would certainly in these cases take a reasonable approach.

Senator THORVALDSON: But supposing you were replaced in a month or two by a bad Tory or a bad N.D.P. who was not as generous in his attitude to these people?

Senator POWER: The Tories have wrecked the country anyhow.

Senator THORVALDSON: Mr. Chairman, I think we are in the same position here as we were with Mr. Bennett of British Columbia. I think it was Senator Crerar and Senator Roebuck who asked Mr. Bennett about this. He said everything the Government of British Columbia does in the next 20 years will be perfect, and naturally he was asked, "Do you expect to be Prime Minister of British Columbia for the indefinite future?" Of course, he replied that he did. But that is the principle involved here. I am not referring to you, Mr. Minister, as a person: I am referring to the Minister of Labour, whoever he may be.

Under section 51 and other sections of the act, isn't it correct that he has very broad discretion in these matters, and that for the first 18 months the shipping industry, or these other industries, will be entirely at the discretion of your thinking in these matters; and, as you have said, your thinking will be influenced by the officials of your department?

Hon. Mr. MACEachen: Well, I do not think I said that.

Senator THORVALDSON: Well, is that an accurate picture of these matters?

Hon. Mr. MACEachen: I think from clause 51 it is pretty clear that the minister decides for the first 18 months on the deferment. That is clear. At that point the minister will set up an inquiry.

Senator THORVALDSON: That is after the 18 months?

Hon. Mr. MACEachen: No, I would think, immediately. Once a deferment is granted an inquiry would be set up so the facts would be disclosed and recommendations made well before the expiry of the 18 months, so an appropriate regime could be established for the ensuing period or periods.

Senator THORVALDSON: Then it is true the inquirers or judges of this matter will be persons appointed by the minister?

Hon. Mr. MACEachen: Yes, they will be appointed by the minister.

Senator THORVALDSON: I know you say you would have fair-minded people.

Hon. Mr. MACEachen: Surely, we have had quite a lot of experience in this country with boards of inquiry and the kind of person that is asked to conduct a board of inquiry. We have just appointed one recently to enquire into the run-throughs, and we had Mr. Justice Freedman of the Court of Appeal. Under the Industrial Disputes and Investigations Act the department, not only under the present minister but under previous ministers, has had occasion to appoint many commissioners. If you examined the quality of the commissioners that have been appointed you would not have any doubt about the operation of clause 35, because they have all been pretty fair-minded men, and we would follow that practice.

Senator McCutcheon: Of course, you are not required to accept their recommendations.

Hon. Mr. MACEachen: No, we are not bound to.

Senator McCutcheon: The ministerial discretion continues forever.

The CHAIRMAN: Not forever under those circumstances, I would say, senator. If a board of inquiry made a decision in favour of taking a certain course of action, and the minister did not make a recommendation in line with that, his exposure might be very critical to his future.

Hon. Mr. MACEachen: I have more confidence in the industries that we are dealing with than apparently the senator has.

The CHAIRMAN: You mean Senator McCutcheon, and not me.

Hon. Mr. MACEachen: Yes.

Senator McCutcheon: I have great confidence in the industry.

Senator Thorvaldson: Mr. Minister, I might continue for a moment in regard to the remarks you made about following the advice of your departmental officials. I would like to refer you to an incident that occurred in this committee this afternoon—

Hon. Mr. MACEachen: I said I would seek, naturally, advice from the departmental officials.

Senator Thorvaldson: I realize that—

The CHAIRMAN: I did not hear the minister say that he would follow it.

Hon. Mr. MACEachen: No, I did not say that.

Senator Thorvaldson: No. You would seek advice from the officials, otherwise you would not need the officials at all. But, for instance, this afternoon counsel to the Senate gave a legal opinion to the effect that the elevator operators need not worry because they would be deemed to be managers under this act, and consequently they would not be covered.

The CHAIRMAN: Wait a minute, senator. That is not exactly what the opinion said. What the law clerk said was:

In my opinion, country elevator operators on the basis of the able and comprehensive description given as to the nature of their work . . .

That is the qualification. He did not say *ipso facto* if you call yourself a country elevator operator you are excluded. He did not give that opinion at all.

Senator Thorvaldson: Probably it is a good thing that there is that qualification there. But, what I am coming to is the fact that there was testimony given this afternoon that the elevator industry had discussed this very question with your officials, who were adamant in maintaining that the elevator operators could not come under clause 3(3) which exempts managers from the provisions of this bill. Where do the elevator operators stand in that situation, Mr. Minister?

Hon. Mr. MACEachen: Am I to understand that the elevator operators stated that the officials of the Department of Labour had stated that elevator operators were managers?

Senator THORVALDSON: No, that they were not managers, and consequently the interest of the elevator people is that their operators be deemed managers, and, therefore, come under clause 3(3)(a). According to the evidence today, they discussed this matter with the officials of your department who maintained that elevator operators do not come within clause 3(3)(a).

The CHAIRMAN: I think we should tell the minister in that connection that there was a letter read here this afternoon which contained an excerpt from a letter which the minister was said to have written and in which he expressed the view that some elevator operators would come within the description of managers.

Senator THORVALDSON: I was coming to that, Mr. Chairman, and you have covered it.

Hon. Mr. MACEachen: Well, I have expressed the view, and the Prime Minister has expressed the view on behalf of the Government, that possibly some elevator operators are managers, but that the bulk of the operators are not managers. Ultimately the courts may have to decide, if there is an issue. I cannot decide it, and I am afraid my officials cannot. We have told frankly what we think the situation was.

Senator HUGESSEN: Would you tell us what the basis of judgment was that the bulk of them did not come within the category of exercising management functions?

Hon. Mr. MACEachen: I think principally, senator, as I recollect it, quite a number of the elevator operators are single persons in the elevator; that they have no employees under them. They do not exercise supervisory functions over other personnel, and this has been one of the key methods of determining who is a manager. As I recollect it, this is the basis of our opinion.

Senator McCutcheon: Under this bill can you exempt, in virtue of section 51, an industry from the regular holidays?

Hon. Mr. MACEachen: I do not think so. If I can then I did not want it to happen.

Senator McCutcheon: In other words, you are taking the position that flight crews are going to be paid eight regular holidays where they have bargained for none; that the running trades on the railways are going to be paid for eight regular holidays when they have bargained for none; and you are going to define what shall be paid to a member of a flight crew who works on a holiday? This is what concerns me. As I see it, you cannot exempt any group from the provisions of whatever the part is that sets up regular holidays.

Hon. Mr. MACEachen: Senator, in this connection we did introduce an amendment in the House of Commons, which imposed a condition on the granting of the regular holidays.

Senator McCutcheon: What was that?

Hon. Mr. MACEachen: It is in clause 33, and we have now laid down as a condition that an employee must be entitled to wages for at least 15 days during the 30 calendar days immediately preceding the holiday, and the clause adds another condition with respect to an employee in a continuous operation such as that of a railway, and that is that such an employee is not entitled to pay for a holiday if, having been called in for work, he does not work on that day. The original draft had neither of those two conditions in it. The reason why these groups you mentioned have not bargained is because in the normal course of events they have quite a bit of time off. We say that a person is entitled to a holiday if he has worked 15 days within the preceding 30 calendar days. In other words, his entitlement is based upon three normal working weeks, and this will meet some of the problems that have been posed.

Senator McCUTCHEON: Are you seriously suggesting that that meets the objections of the Railway Association and the Air Transport Association?

Hon. Mr. MACEACHEN: I would not say it fully meets them, but it meets them in part.

Senator McCUTCHEON: To what extent?

Hon. Mr. MACEACHEN: To the extent that previously in the original draft there was no period of entitlement within the 30 preceding calendar days.

Senator McCUTCHEON: This is really the Government getting into the collective bargaining business with the strongest unions and the highest paid people in the country. Now, do you consider that to be your function, Mr. Minister?

Hon. Mr. MACEACHEN: No, I believe in collective bargaining, and I resisted, if you noticed in the press, a number of efforts to increase the scope of this bill, and to increase the area of encroachment. No doubt, to the extent that this bill establishes conditions, it does enter a field that might normally be occupied by collective bargaining. I think the defence for that entry is that we are establishing minimum standards; that these are minimum standards generally prevailing, and that there is a great scope beyond those minimums as has been obvious from the evidence, for the free flow of collective bargaining.

Senator McCUTCHEON: You would not accept the fact that there may be certain groups who do not require these minimum standards, which inevitably cut right through the heart of collective bargaining agreements that have been worked out over a period of many years?

The CHAIRMAN: If they do not require them, then it must be that they have more favourable conditions.

Senator McCUTCHEON: I don't agree with your interpretation of the section at all, Mr. Chairman.

Senator CROLL: Is it your contention that there are groups in this country that do not require the protection provided by this Act?

Senator McCUTCHEON: There are groups in this country that are so strongly entranced—

Senator CROLL: I understood you to say that there are groups in this country that don't require the protection of the minimum standards in the bill. Was I wrong?

Senator McCUTCHEON: No, you are perfectly right. That is what I said. I was referring to two specific groups who are quite capable of looking after themselves and who have been looking after themselves for a long time. They are among the highest paid trade unionists in the country and we are now getting into the situation where you are putting a third party, the Government, at the bargaining table.

The CHAIRMAN: That is your interpretation, but you are ignoring clause 4.

Senator McCUTCHEON: We do not agree on that.

Senator CROLL: I am still troubled. I don't see the point at all. Let us get this clear. The point made by Senator McCutcheon was that there are groups in this country that do not require protection of the minimum standards under this bill.

Senator MÉTHOT: Because they have strong unions. You are going to discriminate against—

Senator CROLL: I was getting to my next question which was whether he wanted weak unions.

Senator McCUTCHEON: I am greatly in favour of strong unions; I have dealt with them all my life and I think they are excellent bodies.

Senator CHOQUETTE: I am not going to deal with unions but I would like to say that we had strong representations made by experts in the shipping industry. That is one industry which is somewhat different from the others because of the fact that they only work 8 months out of 12. To compensate for the 4 months they are not working they are paid 56 hours per week. Now they went so far as to say that if they come under this Act, and if they are forced to come under this Act, that the people now earning \$6,000, for instance, will have their incomes reduced by one third which will bring them down to \$4,000. I believe in experts in industry, and I think they have got to be top-notch men, and I don't think the Government has top-notch experts unless they absorb them. So now I am asking how you will alleviate that problem?

Hon. Mr. MACEachen: What the shipping industry said was that if the standard hours, the eight-hour day and forty-hour week, were imposed as of July 1st, 1965, these results would follow. They are right.

Senator CHOQUETTE: But I am going further in asking about the 18 months deferment. Do you still hope to solve that problem?

Hon. Mr. MACEachen: I am absolutely convinced it will be solved.

Senator McCutcheon: It can be solved. Mr. Leitch will just lay up 12 of his ships and put some of the others under the Japanese flag.

Hon. Mr. MACEachen: That is one of the unfair aspects of the representations made before this committee. Some of the people appearing before you have failed to take into account clauses 35 and 51 and some of the briefs were written before these amendments were passed in the House of Commons and are based exclusively on the assumption that on the 1st of July, 1965 the conditions will be imposed, period.

Senator McCutcheon: I accept your good faith completely, Mr. Minister, but if I were in the shipping business I would not want to live at all times under the guillotine. That is the position the shipping industry will be in.

Hon. Mr. MACEachen: That is a very picturesque way of putting it, but it is wholly inaccurate. It is a completely inaccurate way of describing the situation.

Senator Thorvaldson: I want to challenge the statement made by the Minister when he said that the briefs presented did not have recognition of the inclusion of clause 51 and the amendments made in the House of Commons.

The CHAIRMAN: He did not say the various briefs.

Senator Thorvaldson: Every man who appeared here before the committee was very knowledgeable on the last and the least amendment made in the bill in the House. As far as I know, I feel they all gave their testimony and presented their briefs in the light of section 51.

Senator Croll: I think I should say at this point that I don't know anything about the people who gave the brief, but I would remind the senator that when he spoke in the House he used the oldest brief available, dating back from last October, because I had the same briefs in front of me criticizing the bill.

Senator CHOQUETTE: They were all the same ones that were sent to us.

The CHAIRMAN: We are not going to thresh out here what Senator Thorvaldson said or what briefs he spoke from or on what he based his remarks when he spoke in the House.

Senator Thorvaldson: I want to challenge the suggestion that any statement made on those briefs was inaccurate.

Senator Croll: Not inaccurate. I said they were old briefs.

The CHAIRMAN: Are there any other questions that are relevant? Senator Lambert?

Senator LAMBERT: I want to return to the earlier reference to the country elevators. You used the phrase "averaging" in connection with the adjustment of the claims made here. We had today evidence given by representatives of competitive organizations in the elevator business in Western Canada, and they were unanimous in saying that due to conditions over which no human being has any control whatever, it would be impossible to observe the requirements unless there is enough elasticity in sections 4 and 51 to meet these conditions. There is a situation existing and which prevailed during the bumper crop over a year ago where it is essential for the benefit of all concerned, including the country as a whole, that the grain should be moved and shipped where it is expected to go in the markets of the world. How are you going to average a period of that kind with the period, in the wintertime, for example, or in the summer before the crops come in, when they are reduced to actual operations of probably a few hours a day. I would like some more enlightenment on this subject of averaging out and how are you going to meet the situation.

Hon. Mr. MACEachen: The proposal is as in clause 5—

(2) Where the nature of the work in an industrial establishment necessitates irregular distribution of an employee's hours of work, the hours of work in a day and the hours of work in a week may be calculated, in such manner and in such circumstances as may be prescribed by the regulations, as an average for a period of two or more weeks.

Now, at certain periods of the year, as I understand it, the elevators are open 10 or 12 hours a day. They may be open for long hours and they must be open in order to provide service to the farmers.

Senator LAMBERT: Under the Canada Grain Act they must be there to provide that service.

Hon. Mr. MACEachen: At other times of the year the elevator operators presumably work 3 or 4 hours. The provision here is that in order to comply with the 8-hour day the hours of work may be averaged over a period of as long as a year so that the long day may be balanced against the 4-hour day.

Senator LAMBERT: For a number of years, there was so much wheat piled up in western Canada that they were never closed at all. They were on a quota system of being permitted to deliver 4 bushels to the acre until they got enough clearance for another quota to be delivered. In that event there were also periods in winter when they were open 4 hours a day in order to move the crop to terminals to supply orders that were available. I do not see how you could average this.

Hon. Mr. MACEachen: You would regard that as an exceptional situation?

Senator LAMBERT: Yes. I am referring to the whole operation of the grain business in western Canada, in the grain elevators, as an exceptional condition. You are working under acts of God all the time, which I do not think it is within the power of Parliament or anyone else to regulate. They have to be met, apart altogether from the status of the agents at the elevators—whether they are managers or employees. That is another position which is open to a good deal of interpretation, due to the services rendered by those people.

The other point you referred to is that there is only one man in those elevators. In my experience and observation, country elevators which are now handling capacity of 100,000 bushels, are subject to the services of more than one man, and there are assistants. The main consideration is giving service to the people who produce the grain to go through these elevators. I would hope that there would be enough elasticity in that section 4, particularly, and in section 51, to meet that situation.

Hon. Mr. MACEachen: We believe we can meet this problem by the averaging. If we cannot, then there is sufficient elasticity in clause 51 to provide a system of hours that will insure that the elevators will be open to service the farmers as required.

Senator LAMBERT: That is adequate assurance all right, but this act does not express that point, I do not think.

The CHAIRMAN: If they get to that—

Senator LAMBERT: You will hear about it then, I am telling you, if that situation arises such as has arisen in fairly recent years. There will certainly be a howl set up to liberalize it.

The CHAIRMAN: You will never cover all the possibilities the first time round.

Senator LAMBERT: That is true, but why start before they come?

Senator ISNOR: I do not suppose the minister has had a chance to read the printed minutes of various briefs as presented to us, because we received copies only today.

The CHAIRMAN: I think he read the proceedings of everything except today.

Senator ISNOR: I was impressed by one brief which has not been mentioned up to the present, namely, the position taken by the C.N.R. so far as hotels are concerned. They pointed out there was a very distinct discrimination between C.N.R. and C.P.R. They stressed to a greater extent park hotels such as Jasper. They pointed out that it was a real discrimination. Has the minister had an opportunity of reading the C.N.R. hotel brief. If so, would he care to discuss that point raised as to whether there is discrimination between C.N. and C.P.

Hon. Mr. MACEachen: I have read the brief and in this bill we are proposing a minimum rate of \$1.25 an hour. By circumstances, the Canadian National hotels are under our jurisdiction and for that reason are subject to the \$1.25. It is a fact that other hotels are not subject to the \$1.25.

Senator ROEBUCK: Did you observe that we questioned—not everybody did but I raised the question—as to whether by constitutional law the hotels of the C.N.R. were under our jurisdiction. It has been assumed that they were in the past, purely by reason of the fact that the assets are owned by the nation, that therefore the relationship between the employer and the employee is under the jurisdiction of the Dominion Government. That assumption, I am not so sure, is true. The railway management certainly those before us, were not at all sure that they were under our jurisdiction. If they are not, then that problem of the unfairness as between C.N. and C.P. and many other hotel interests, disappears.

Hon. Mr. MACEachen: My advice is that the C.N. hotels are under this bill. They are considered to be subject to federal labour legislation as being part of the operations of a crown corporation, established to operate and maintain a national system of railways. That is my advice.

Senator ROEBUCK: A hotel is not a system of railways.

The CHAIRMAN: The Saskatchewan Court of Appeal has said exactly the opposite to what you are saying, senator.

Senator McCutcheon: And because they are under federal jurisdiction we are entitled to discriminate against them.

Hon. Mr. MACEachen: I think you can put it another way, senator. Because they are under federal jurisdiction, we have an opportunity to do something about the wage rates of the employees.

Senator ROEBUCK: That is right, that is correct.

Senator ISNOR: I wanted to stress the point the minister has just made. If you bring the C.N. hotel system under this bill, that will certainly be discriminating in so far as other hotels, namely, C.P. and the local or privately owned hotels and motels also, which do not come under it. I would not think that that is the purpose of the bill.

Hon. Mr. MACEachen: The alternative would be to exclude the C.N. hotels from the bill and by doing that, discriminate against the employees of those hotels who are entitled to the same protection that other employees get in federal industries. That is another way of looking at it.

Senator HUGESSEN: Have you not got back to the same question—have not those employees got a union of their own and special agreements under which they operate and bargain. Is that not something which they have got, and why do you want to interfere?

Senator McCutcheon: They will not have many employees unless they rent the other hotels. The problem is capable of solution.

Senator FLYNN: Would the Queen Elizabeth, managed by Hilton, be in the same position as the Chateau Laurier operated by itself? Is not that discrimination?

The CHAIRMAN: It is possible to put all the C.N.R. hotels in the same situation.

Senator McCutcheon: The Queen Elizabeth and the Vancouver Hotel employees are not affected.

Senator CHOQUETTE: Before the minister leaves, I would like to end on an optimistic note. I must say that all the briefs we heard so far show that the main trouble is the hours of work. I think the majority of them, if not all, have asked to be excluded from this act. The question I would like to leave with you is this—is there a possibility of any of these special types of industry being mentioned in this act as being excluded from the act? Is that going to be taken into consideration?

Hon. Mr. MACEachen: Mr. Chairman, I considered this, I assure you, very carefully, since the bill was first introduced on October 1. We concluded that it would be wrong to exempt any particular industry or operation at this stage from the operation of the bill. We did think it was appropriate to provide within the bill provisions that would take into account the various problems of these industries. I believe that within the bill that opportunity exists to take into account the difficulties of each of these operations.

Senator CHOQUETTE: I would like it plainly understood that the briefs that were presented to us here were altered from the old briefs, in the light of the amendment that you made. They make it plain to us. Those were the most recent briefs that were presented.

Hon. Mr. MACEachen: In that case, I was incorrect. I will not get into an argument on the point. I thought a number of briefs were in the same terms as those that came earlier.

The CHAIRMAN: Senator Thorvaldson says he has one question.

Senator THORVALDSON: Mr. Minister, I noticed that you were impressed with the possibility that the elevator operators might come under this system of averaging which you referred to. I was wondering if you were aware of the fact that they are probably the only employees in Canada that would come under this act who have no one to keep their time. They have to keep their own time themselves, and there is no one to keep it except the elevator

operators. Consequently, when you consider that western Canada has approximately 5,000 elevator operators, each one keeping his own time, I am wondering what your reaction is to the question of averaging in the light of those facts.

The CHAIRMAN: If it does not work they will have to try something else.

Senator CROLL: What is wrong with an honest man keeping his own time?

Hon. Mr. MACEachen: It seems to me that it has been stated by the elevators here that these men are of such a stature and character that they are managers. Surely if they are managers in the judgment of the elevators, then they ought to be entrusted to keep their own time.

Senator THORVALDSON: I do not think the issue ever was a matter of dishonesty or not, but do you know of any other situation in Canada that comes under this bill where a large body of workers is involved within the terms of this bill and keep their own time?

Senator CROLL: Members of Parliament keep their own time.

Hon. Mr. MACEachen: No, senator, I do not know of any other; there may be others, but I do not know.

Senator KINLEY: I cannot conceive in industry of employees keeping their own time, and the people who pay them not seeing that the time is right.

The CHAIRMAN: If we are through with the minister, I suggest that for our consideration of the bill we might meet at 9.30 tomorrow morning, and see how much time we have then. If it is going to interfere with other meetings during the day, we may not sit the whole morning.

Senator CROLL: I should think you would want the largest possible group to consider the bill tomorrow morning.

The CHAIRMAN: I am suggesting we meet at 9.30 for an hour.

The committee adjourned.

APPENDIX "A"

Dated 20/6/61

FLIGHT AND FLIGHT DUTY TIMES

1. INTRODUCTION

- 1.1 This circular outlines standards relative to flight time and flight duty time limitations and shall apply to all flight crew members employed in commercial air services involving:—

- (a) the operation of aircraft having a gross weight for take-off in excess of 12,500 lbs., and
- (b) the operation of any aircraft on services certificated for operation under IFR weather conditions;

NOTE: Notwithstanding (a) and (b) above, the flight time limitations set out herein may be applied to the operations of any air carrier if it is determined that such limitations are necessary to maintain an acceptable level of safety in such operations.

- 1.2 The limitations and definitions set out hereunder have been established for the sole purpose of avoiding fatigue which would endanger air safety.

2. APPLICATION

- 2.1 The provision of maximum flight and flight duty times and the minimum rest periods hereunder does not relieve a flight crew member from complying with Paragraph 408 of the Air Regulations. It shall be the responsibility of the flight crew member to refrain from any activity which might cause him to be fatigued at the commencement of his duty period.

- 2.2 It shall be the responsibility of the operator to incorporate in an Operations Manual limitations appropriate to his operation which do not exceed the limitations specified herein.

- 2.3 An operator shall, when establishing limitations, take into account the following:—

- (a) type of aircraft, equipment and crew complement;
- (b) frequency of take-offs and landings;
- (c) times of scheduled arrivals and departures;
- (d) route flown;
- (e) rest and flight relief facilities;
- (f) the probability of operational delays.

3. DEFINITIONS

- 3.1 *Flight Crew Member*—is as defined in Sub-section 32, Section 101, Part I of the Air Regulations.

- 3.2 *Flight Time*—is the total time from the moment an aircraft first moves under its own power for the purpose of taking-off until the moment it comes to rest at the end of the flight.

NOTE: Flight time as here defined is synonymous with the term "block to block" time in general usage which is measured from the time the aircraft moves from the loading point until it stops at the unloading point.

- 3.3 *Flight Duty Time*—is the time necessary to prepare for, execute and terminate a flight or series of flights and the administrative functions associated therewith.

NOTE: The term “series of flights” is used to indicate flights uninterrupted by a rest period.

- 3.4 *Flight Relief*—are accommodations available to the flight deck which provide privacy, ventilation, and adequate dimensions for prone rest.
- 3.5 *Flight Deck Duty Time*—is any portion of flight time spent at a position for which a flight crew member is required.
- 3.6 *Rest Period*—is a period spent on the ground during which a flight crew member is relieved of all duties associated with his employment.
- 3.7 *Period of Time*—is as follows:
Day—24 consecutive hours
Month—Calendar month
Quarter—Any designated 3-month calendar period
Year—Calendar Year

4. FLIGHT TIME LIMITATIONS

- 4.1 The flight time of a flight crew member shall not exceed:
- (a) 120 hours in any month;
 - (b) 300 hours in any quarter;
 - (c) 1200 hours in any year.

5. FLIGHT DUTY TIME LIMITATIONS

- 5.1 The flight duty time of a flight crew member shall not be scheduled or planned to exceed 15 hours in any day, except under the following circumstances:—
- (a) the flight crew includes 3 or more pilots, at least 2 of whom are qualified by the operator to act as pilot-in-command; and
 - (b) flight relief facilities are available for each flight crew member relieved; and
 - (c) no flight crew member is scheduled to exceed 12 consecutive hours flight deck duty time; and
 - (d) the flight duty time does not exceed 24 hours.

6. EXTENSIONS OF LIMITATIONS

- 6.1 The limitations herein may be extended if, in the judgment of the pilot-in-command, it is safe to do so for the following purposes:
- (a) engagement in search and rescue activities;
 - (b) provision of relief in cases of distress;
 - (c) completion of a flight duty period which operational conditions has extended beyond the limitations.
- 6.2 When the daily flight duty limitation period of 15 hours is exceeded by more than 2 hours, and subject to the exceptions in 5.1 above, or when any other of the limitations are exceeded by any amount, a report in a method acceptable to the Department of Transport shall be made by the pilot-in-command to the operator.

DECEMBER 1964

MONTH: DECEMBER

DC-8 PILOTS

ASSIGNMENTS		SKED HOURS	DC-8 FLIGHTS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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7. REST PERIODS

- 7.1 A rest period of sufficient length shall be provided which, taking into account the amount and type of duty preceding and following the rest period, will ensure time for adequate rest prior to undertaking a flight.
- 7.2 A rest period shall in no case be less than 8 consecutive hours, unless in the opinion of the flight crew involved an earlier departure would not jeopardize the safety of the operation.

PACIFIC WESTERN AIRLINES LIMITED

Northern Division

To: Flight Attendants, N.D.	From: Supervisors of Passenger
cc. Supt. of Industrial Relations, VR	Services, N.D.
Supt. of Passenger Services, VR	File: 17.11.55
Flight Dispatch, XD	Date: June 15th, 1964.
Personnel, XD	July, 1964.
Re: Stewardess crew cycle	

Please find the attached copy of your July cycles on which you are requested to submit your choice in accordance with base seniority and return to this office not later than Monday, June 22nd, 1964. Any persons not submitting their choice by that date will be assigned a cycle which has not been previously selected.

Since a large percentage of our staff are relatively new hires on probation, it may become necessary in some cases to assign cycles or flights for training purposes. The designator "CH" has been used to indicate the Great Bear charters departing Edmonton Saturday mornings.

When all cycles have been assigned as per your bids and seniority, your copy of the cycle will be returned to you and will outline your schedule for the month of July, 1964.

G. K. Petri

GKP/iaap

[illegible]

Average 15.1 days off in the month.

STANDING COMMITTEE

TYPICAL DAYS OFF/DAYS WORKED—SALARY BASED
ON QUARTERLY BID PERIODS

Days off at domicile	Days off away	Days worked	Salary
44	17	31	\$6,987.58
40	22	29	\$6,804.52
42	9	40	\$6,639.74
42	13	37	\$6,487.74
44	18	30	\$6,526.42
44	16	32	\$6,626.61

APPENDIX "B"

THE SHIPPING FEDERATION OF CANADA

326 Board of Trade Bldg.,

Montreal 1

December 10, 1964.

COPY

File: LS.17—16

The Honourable Allan J. MacEachen,
Minister of Labour,
Ottawa, Ontario.

BILL C-126

Sir:

We wish to refer you to our letter dated October 22nd, your reply dated October 26th, our telegram on November 9th and your written acknowledgement dated November 13th, all on the subject of the proposed Federal Labour Code.

We much appreciate your kindness for giving us the opportunity to submit to you further representations on this subject and we now set out, in more detail, conditions obtaining in the steamship and stevedoring industries in Eastern Canada, which, in our opinion make it impracticable for them to operate within the restrictions envisaged in Bill C-126.

1. Shore labour at St. Lawrence and Maritime ports is Unionized and is hired on a period by period basis (a period is generally four hours) by a number of employers—such labour can work for one employer in the morning, another in the afternoon and still another in the evening—or in other words a shore labour employee can work for thirteen employers in any given week at Montreal. The same circumstances exist at other St. Lawrence ports and at Maritime ports, although there are fewer employers at these ports. The men are paid weekly by the individual employers separately. Shore labour at these ports, therefore, is employed on a casual basis. Employees are not permanently employed by any one employer for more than a period—they must be called back for a subsequent period if required. The ship, which in fact is the actual employer, has no control over the number of employees on strength with the Union Locals, and, as will be seen from the attached agreements, *preference of work* must be given to their members.

2. The ship, not the employer, is the sole factor which determines when an employee works. A vessel may be delayed on an ocean crossing by adverse weather, or may be delayed sailing from any foreign port due to any number of reasons, i.e., late arrival of cargo, shore labour strikes, weather conditions preventing loading or discharging, towboat strikes, congestion, etc., etc., which delays her arrival at a Canadian port necessitating round-the-clock loading and/or discharging operations to make up this lost time for the purpose of keeping to advertised schedule dates. The employers, therefore, have no control over the hours worked by any given shore labour employee during any given

day or week. It is the presence of the ship and her ability to work cargo that governs. This ability to work cargo is also subject to weather conditions being favourable—(vessels do not normally work in the rain because of damage to cargo) and the availability of cargo which may be late in arriving. The early arrival of cargo at the dock is also susceptible to a variety of obstacles, i.e., traffic congestion in the case of trucked cargo, railway shunts to the particular pier where the ship is loading in the case of railed cargo, etc.—these problems are particularly prevalent at the Maritime ports during the winter season when winter weather conditions make it much more difficult to maintain speedy cargo delivery. If a prolonged period of bad weather occurs, either winter or summer, work must stop until the weather improves. This lost time therefore must be made up by the ship or ships and accordingly much overtime work is required. These are the chief factors which set this industry apart from shore-based industries—the “factory” so to speak is movable and is subject to so many indeterminable factors which govern its arrival and departure, and, consequently, its ability to know in advance when and how much work it can provide. Very often advance notice of work is limited to a few hours due to fog conditions in the St. Lawrence River or on the coast and to harbour congestion which requires a vessel to anchor awaiting a berth.

3. The climate of Eastern Canada requires the working of ships in St. Lawrence ports primarily during the summer, which ships transfer their operations to the Maritime ports of Halifax and Saint John during the winter. It will be seen therefore that shore labour in these areas is seasonally employed—approximately 8½ months in the St. Lawrence and 3½ months in the Maritimes. Employees accordingly seek as much employment as possible during the open season, and welcome all the overtime work at *premium rates* as they are able to obtain. Under these circumstances, the Unions involved are reluctant to increase their memberships which would spread the available hours of work over a greater number of employees and consequently reduce their earnings. The seasonal aspect of navigation at the St. Lawrence ports creates, even now, a considerable problem during the final few weeks of operation in November/December when weather conditions are often unsuitable for the loading and discharging of cargo. Congestion in the river ports is at its peak at this time of year because of slow vessel turn-round due to the above-mentioned reason. Labour begins to disperse in early December to winter jobs necessitating the forces available to work much overtime, which, although they are quite willing, further contributes to slow turn-round. Letters of credit and other banking documents on export cargo expiring at this time of year create another very serious problem and round-the-clock operations are frequently required in order to allow the issuance of bills of lading prior to expiry dates. It will readily be seen that the proposed legislation would seriously compound all these problems. If men who have worked over the average number of hours allowed by the legislation cannot work when needed at this time of the year the labour shortage would be critical, quite apart from the fact that, in this industry, where labour works for as many as 13 employers during the season, calculation of each employee's average weekly hours worked for all employers collectively over the season, which would have to be known by each employer at this time of the year, on a day-to-day basis, even on a period-to-period basis, would practically speaking, be impossible.

4. The rates of wages currently being paid to shore labour by the ships is at a very generous level (see copies of collective agreements attached). If employees are forced to curtail their hours of work, which we are convinced they would be most reluctant to do, demands would undoubtedly be forthcoming for compensation by the ship to make up their normal seasonal earnings. If agreed, this would entail increased rates of wages and consequently

higher costs of loading and discharging cargo, culminating finally in higher ocean freight rates on commodities—an obvious detriment to Canada's export and import trade.

5. As provided in the proposed Bill, an employee is to have seven statutory holidays with pay during a calendar year, and if he is required to work on any such holiday he is to be paid his normal pay for that day plus an amount equal to $1\frac{1}{2}$ times his normal pay. It will be seen in the collective agreements submitted with this brief that holidays are provided for, on which, if an employee works, he is to be paid double the normal rate. In the light of the foregoing explanation of how shore labour employees are employed it will, we submit, be obvious that it would be impossible to determine who is to pay an employee if he is not employed on any given holiday. Such an employee is, in fact, unemployed on that day in that he is not on the payroll of any employer. Holidays are agreed upon in the stevedoring industry through collective bargaining and should a ship elect to work on a holiday stipulated in the agreement, it must pay double-time to any employee covered by such agreement who is employed on that day. The factors governing whether or not a ship will work on a holiday are as aforementioned, i.e.—availability of cargo, weather conditions, late arrival of the ship due to delays at other ports or weather en route necessitating the quickest possible turn-round to maintain schedules, etc.

6. Hours of work by shore labour at the principal St. Lawrence and Maritime ports over the past three years, divided into categories of total hours worked throughout the year by employees is attached for your information. It will be seen from this statement that, when basing averages on 37 weeks' work at the St. Lawrence ports and 15 weeks' work in the Maritimes, which are in effect the respective open seasons of navigation, a very large percentage of the employees at the Maritime ports of Saint John, N.B. and Halifax, N.S. work well in excess of 720 hours over the season, or more, on an average, than the 48 hours per week allowed by the proposed legislation. At the St. Lawrence ports of Montreal, Three Rivers and Quebec the percentages are smaller but nonetheless important. At the ports of Saint John and Halifax particularly the new legislation would require a considerable increase in the labour force to ensure that no one in the industry works more than an average of 48 hours per week. We would be very fearful, however, that such a restriction would make the industry completely unattractive to new labour and, moreover, we are convinced that great difficulty would be had in retaining the present labour force under these conditions. This labour force, to a large extent, has been employed in this industry all their working lives and are accustomed to working in outside winter conditions. They are experienced in their work and perform well. If the chief attraction to this industry in the ports mentioned, which is the ability to work a short season with high remuneration, is removed, a large part of the existing force will leave the industry and, of necessity, seek other employment in an effort to maintain a standard of living.

7. Finally, a serious hardship would be felt by the steamship and stevedoring companies under Bill C-126 in respect of certain members of their office staffs who, due to the uncertainties involved in steamship operation as illustrated above, are required to work very frequently during overtime hours, for which of course they receive remuneration.

We would respectfully request that, in view of the foregoing, and in the particular interest of keeping cargo handling costs to a minimum, and, consequently transportation costs of Canada's foreign trade competitive, careful consideration be given to imposing any restrictions, as would flow from Bill

STANDING COMMITTEE

C-126, on the shipping and stevedoring industries of Canada. We would further ask that an opportunity be given the Federation to be heard when the said Bill is in public Committee.

Respectfully yours,

C. T. Mearns,
General Manager.

CTM:kp

Encs.

Year Ended November 30/61

	Hours				Total	Total ILA Force
	1500- 1749	1750- 1999	2000- 2499	2500 & Over		
Montreal	551	283	103	14	951	3065
Quebec	157	52	13	6	228	511
Three Rivers	63	33	18	7	121	365

Year Ended November 30/62

	Hours				Total	Total ILA Force
	1500- 1749	1750- 1999	2000- 2499	2500 & Over		
Montreal	637	201	101	14	953	2919
Quebec	172	43	17	3	235	508
Three Rivers	54	26	10	7	97	399

Year Ended November 30/63

	Hours				Total	Total ILA Force
	1500- 1749	1750- 1999	2000- 2499	2500 & Over		
Montreal	749	394	149	25	1317	2867
Quebec	126	109	43	9	287	511
Three Rivers	51	39	17	9	116	383

Year Ended November 30/61

	Hours						Total ILA Men Working
	0- 249	250- 499	500- 749	750- 999	1000- 1249	1250- 1499	
Saint John ..	352	320	761	440	142	46	2090
Halifax	124	133	187	202	231	192	1303

Year Ended November 30/62

	Hours						Total ILA Men Working
	0- 249	250- 499	500- 749	750- 999	1000- 1249	1250- 1499	
Saint John ..	366	387	655	295	154	66	1959
Halifax	129	89	195	240	259	148	1248

Year Ended November 30/63

	Hours						Total ILA Men Working
	0- 249	250- 499	500- 749	750- 999	1000- 1249	1250- 1499	
Saint John ..	310	227	589	473	190	80	1924
Halifax	79	74	183	229	255	170	1189

THE SHIPPING FEDERATION OF CANADA

326 Board of Trade Bldg.

Montreal 1

February 12, 1965.

File: LS. 17-16

Hon. Allan J. MacEachen,
Minister of Labour,
Ottawa, Ont.

Sir:

We thank you for your letter dated December 17, 1964, which was in reply to ours dated December 10th on the subject of proposed Bill C-126 and its effect on the shipping and stevedoring industry.

The Ministerial permit provided for under Section 9 of the Bill covers exceptional circumstances which we feel obtain perpetually in the stevedoring industry. Even during the winter season at the St. Lawrence ports when stevedoring activity is very limited, although this is increasing each year, the vast majority of longshoremen find other employment, or take advantage of unemployment insurance, leaving a nucleus of labour available to perform the necessary work on those vessels which maintain services to these ports at that time. In other words, although work is reduced, so is the labour force, resulting in much the same working conditions, so far as hours of work are concerned, as prevail in the summer time.

We would like to reiterate that the number of hours of work available for longshoremen is impossible to forecast, even a week ahead, for the reasons set out in our letter dated December 10, 1964, and any permit issued under Section 9 of the Bill would therefore need to be a blanket one, so far as the number of additional hours over 48 per week is concerned, as well as a perpetual one. Advantage would also need to be taken of Section 5(a) of the Bill in conjunction with the Ministerial permit, i.e., averaging, which, we feel, would have to be done over a full 12-month period.

In the third paragraph of your letter you ask if it would be possible to obtain information as to the number of hours longshoremen work for one employer during a season. Although this information is very difficult to obtain in respect of each and every longshoreman, we were able to secure an analysis of the total hours worked by regular gang foremen for the main stevedoring companies at the five ports of Montreal, Three Rivers, Quebec, Saint John and Halifax. (Each foreman represents approximately 20 men for the purposes of this analysis.) This analysis is attached. The figures under "Sole Employer" represent the total number of hours worked by each foreman and his gang for one company only. The figures under "Principal Employer, but also worked for all other Employers" represent the total number of hours worked by other foremen and their gangs for all companies, although these foremen and their gangs worked the majority of those hours for the one employer. The number of foremen covered in this analysis represents a large majority of the total work force at each port.

If the provisions described in the first paragraph of this letter were obtainable by our industry under the legislation, which we feel they must be if

cargo handling and other related costs are to be kept to a minimum, the purpose of the Bill, so far as the steamship industry is concerned, would not be achieved and supports our contention that such restrictive legislation should not apply to this industry.

Respectfully yours,

C. T. Mearns,
General Manager.

Sample of Longshoremen's Hours worked for Period Dec. 1/63—Nov. 30/64

PORT OF MONTREAL

Employer No. 1

(Each Sole employer Foreman)	Principal employer, but also worked for all other employers
Hours: 2250, 2283, 2175, 2046, 2040, 1945, 2047, 1893, 1935, 1805	Hours: 1237, 3132, 1854, 1769, 1503, 1627, 1389

Employer No. 2

Hours: 1672, 1319, 1251, 1474, 1317	Hours: 1286, 1264, 1146, 1415, 1217, 1154, 1157
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Employer No. 3

Hours: 2469, 1978, 1704, 1446	Hours: 1456, 1281, 1221, 1542, 2169, 1636, 1604, 2036, 1442
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Employer No. 4

Hours: 2460, 2310, 2534, 2520, 3453, 2268, 2352, 2229, 2093, 2106, 2214, 1982, 1320, 1897, 2000, 1639, 1930, 1935, 2085, 1995, 2078	Hours: 710, 741, 2028
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Employer No. 5

Hours: 1141, 1457, 1476	Hours: 1628, 2156, 1471, 1469
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Employer No. 6

Hours: 2550, 2725, 1775, 2176, 2975,
2811, 2215, 2258, 1729, 1707, 1675,
1592, 1577, 1778, 2110, 1548, 1329,
1584, 1607, 1579, 1197, 1614, 1659.

Employer No. 7

Hours: 2238, 2288, 1704, 2085, 1839, 1016, 1558, 1571, 2233	Hours: 1596, 1709, 1754, 1507
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Employer No. 8

Hours: 1930, 1819, 1444	Hours: 1410, 1530, 1675, 1458, 1192
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PORT OF QUEBEC

Employer No. 1

(Each Sole employer
Foreman)

Hours: 2043

Principal employer, but also worked
for all other employers

Hours: 2683, 2541, 2411, 2218, 2020,
2226, 2768, 2713, 2660, 2471, 2216,
2222

Employer No. 2

Hours: 1630, 2634, 1683, 2066, 2175

Hours: 1661, 1953, 1913, 2039, 2259,
2377

Employer No. 3

Hours: 3023

Hours: 2021, 2232, 2147, 2532, 2578,
2313

PORT OF THREE RIVERS

Employer No. 1

Hours: 3032, 2212, 2044, 2751, 2992,
3121, 3449

Hours: 2360, 2688, 1917, 2149, 2258,
2007

Employer No. 2

Hours: 2188, 1159, 1323

Hours: 1620, 1469, 1762, 2003, 2202,
2177

PORT OF SAINT JOHN, N.B.

Employer No. 1

Hours: 1109, 2071, 2122, 1499, 2420,
2068

Hours: 909, 1562, 1440, 1602, 1020,
1577

Employer No. 2

Hours: 729, 756

Hours: 824, 914, 771, 818, 1352, 1106,
829

Employer No. 3

Hours: 823, 649, 986, 740, 958, 648

Hours: 1202, 1475, 872, 1136, 593

Employer No. 4

Hours: 1542

Hours: 1168, 1252, 748, 653, 1475

Employer No. 5

Hours: 569

Hours: 1227, 1121, 655, 1578, 1109,
1029, 1352, 1245, 1618

PORT OF HALIFAX, N.S.

Employer No. 1

(Each Sole employer
Foreman)

Principal employer, but also worked
for all other employers

Hours: 2577

Hours: 2073, 1309, 2488

Employer No. 2

Hours: 1713, 1064

Hours: 1085, 875, 1392, 1330, 1040,
876

Employer No. 3

Hours: 2565, 2015, 1772

Hours: 1294, 1171, 1825, 1843

Employer No. 4

Hours: 2477, 2425, 2774

Hours: 1211, 1722, 1553

Employer No. 5

Hours: 2893

Hours: 1249, 1274, 2644

Employer No. 6

Hours: 2262

Hours: 792, 1429, 2111

Employer No. 7

Hours: 1743

Hours: 2330, 1612, 1182, 1355



Second Session—Twenty-sixth Parliament

1964-1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To which was referred the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses."

The Honourable **SALTER A. HAYDEN**, *Chairman*

Wednesday, March 10, 1965

No. 3

Appendix:

"C" Provincial Minimum Wage Rates.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Leonard	Taylor
Crerar	Macdonald (<i>Brantford</i>)	Thorvaldson
Croll	McCutcheon	Vaillancourt
Davies	McKeen	Vien
Dessureault	McLean	Walker
Farris	Molson	White
Fergusson	Monette	Willis
Flynn	O'Leary (<i>Carleton</i>)	Woodrow—(50).
Gelinas		

Ex officio members: Brooks, and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 3, 1965.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Connolly, P.C., for second reading of the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and business."

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 10th, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Bouffard, Burchill, Connolly (*Ottawa West*), Cook, Farris, Fergusson, Flynn, Gershaw, Gouin, Hugessen, Isnor, Kinley, Lambert, Lang, Leonard, McCutcheon, McKeen, McLean, Power, Reid, Roebuck, Taylor, Thorvaldson, Vien and White.—(32).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses", was further considered, clause by clause.

The Honourable Senator McCutcheon moved that clause 2 (f) be amended by striking out "Remembrance Day". The question being put on the motion, it was declared Resolved in the negative by the Chairman.

The Honourable Senator Thorvaldson moved that sub-clause (3) (a) be amended by adding after "function" the following: "including managers and/or operators of country grain elevators as specified in the Grain Act". The question being put on the motion, it was declared Resolved in the negative by the Chairman.

The Honourable Senator McCutcheon moved that clause 3—sub-clause (3) be amended by adding a new paragraph (c) as follows: "engaged in any undertaking subject to the Aeronautics Act, the Railway Act or the Canada Shipping Act." The question being put on the motion, it was Resolved in the negative, on the following division:

YEAS 10 NAYS 10

The Honourable Senator McCutcheon moved that clause 8 be amended as follows: Line 41, strike out "regular" and substitute therefor the following: "the minimum hourly rate prescribed by this Act". The question being put on the motion, it was declared Resolved in the negative by the Chairman.

The Honourable Senator Thorvaldson moved that a new clause 10A be added to Part I as follows: "This Part does not apply to or in respect of an employee who is in charge of and is responsible for the care, custody and control of any work or undertaking, or an integral part thereof declared by the Parliament of Canada to be for the general advantage of Canada". The question being put on the motion, it was declared Resolved in the negative by the Chairman.

The Honourable Senator McCutcheon moved that wherever the words "Part I" appear in clause 51 the following be added thereafter: "or the provisions of Part IV". The question being put on the motion, it was Resolved in the negative, on the following division:

YEAS 10 NAYS 11

The Honourable Senator Flynn Moved that a new clause 52A be added as follows: "An Order in Council passed under the authority of Section 51 (2) shall lapse after one year of its adoption, if it has not been approved by Parliament in the meantime". The question being put on the motion, it was Resolved in the negative, on the following division:

YEAS 7 NAYS 12

On Motion duly put it was Resolved to report the Bill without amendment, on division.

It was agreed that a list of Provincial Minimum Wage Rates, supplied by the Canadian Labour Congress be printed as Appendix "C" to these Proceedings.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 10th, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-126, intituled: "An Act respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses", has in obedience to the order of reference of March 3rd, 1965, examined the said Bill and now reports the same without any amendment.

All of which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 10, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-126, respecting hours of work, minimum wages, annual vacations and holidays with pay in federal works, undertakings and businesses.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: I call the meeting to order. This morning we propose to go through the bill section by section, and as was indicated last night we propose to sit until about 10.30, or perhaps a little beyond that.

Shall section 2 carry?

Senator McCUTCHEON: I have something to say about section 2, Mr. Chairman. I refer to subsection (f). I want to help the minister out by moving an amendment to strike out in lines 11 and 12 the words "Remembrance Day".

The CHAIRMAN: We have an amendment moved in relation to section 2(f) that we strike out the words "Remembrance Day".

Senator McCUTCHEON: In the other place a motion was put to amend that section by deleting "Remembrance Day," and the minister and his colleagues voted against it.

The CHAIRMAN: Are you ready for the question?

Senator WHITE: Mr. Chairman, what is the reason for striking out "Remembrance Day"?

The CHAIRMAN: Well, do not ask the Chair, ask the mover.

Senator WHITE: What is your reason for moving this amendment, senator? Why is it unnecessary to include Remembrance Day? If it were not for Remembrance Day we would not be sitting here so that you could have the right to move such an amendment.

The CHAIRMAN: Are you ready for the question? All in favour, please raise your hands. Contrary?

The motion is lost.

Section 2 carries.

Section 3. Shall section 3 carry?

Senator THORVALDSON: I want to move an amendment to section 3, subsection 3(a). I move that there be added after the word "functions", these words: including managers and/or operators of country grain elevators as specified in the Canada Grain Act.

The CHAIRMAN: You have heard the proposed amendment. Are you ready for the question? Those supporting the amendment please raise their hand? Contrary? I declare the motion lost.

Section 3 carries.

Senator McCUTCHEON: I move an amendment to section 3, subsection 3, by adding a new clause (c), as follows:

engaged in any undertaking subject to the Aeronautics Act, the Railway Act, or the Canada Shipping Act.

The CHAIRMAN: This amendment is in effect an exemption. Are you ready for the question?

Senator ISNOR: Would Senator McCutcheon give some reason for his proposed amendment?

Senator McCUTCHEON: We have had abundant evidence in our hearings, honourable senators, to convince me, at least, and I think other honourable senators that flight crews, for example, are not in the type of employment which is susceptible to having a great many of the provisions of this act applied to them. The same is true of the running trades of the railways, including dining and sleeping car trades, and the same goes for employees generally in shipping. The amendment could be narrowed, but I do not think it requires to be narrowed, because, again, it is abundantly clear to us, I think, that employees such as flight crews, for example, would not be affected, nor other employees engaged in undertakings subject to the Aeronautics Act. Other employees than the running trades and dining and sleeping car trades in undertakings subject to the Railway Act now enjoy working conditions, by and large, which are equal to or better than those which would be established by the minimum provisions of this act.

So, for simplicity, my amendment is that all those groups of employees be exempted.

The CHAIRMAN: We have this amendment proposed as subsection (c) of subparagraph 3 of clause 3. Are you ready for the question?

Some Hon. SENATORS: Question.

The CHAIRMAN: Those supporting the amendment, please raise your hands.

Senator McCUTCHEON: Perhaps we could have a roll call vote.

The CHAIRMAN: We do not have such a thing here.

Senator McCUTCHEON: You have had before, with you in the chair.

The CHAIRMAN: Those contrary please raise your hands.

All the senators have not voted, but the vote, as recorded, is 10 to 10, and the chairman is not put in the position of casting a vote because unless an amendment gets a majority it is lost, so the amendment is lost.

Shall section 3 carry?

Some Hon. SENATORS: Carried.

Senator THORVALDSON: Mr. Chairman, in regard to section 3 and in regard to the amendment that I move to section 3(3)(a), I want to say I believe that a very strong case was made out yesterday for this amendment by the people from western Canada who operate elevators. You will recall—

The CHAIRMAN: My own personal view, senator, is they do not need it. I mean, they do not need it in the sense that they have it in the use of the words "exercise management functions".

Senator ROEBUCK: If they do not exercise management functions, they ought to be in it.

Senator THORVALDSON: That is the whole point of my proposed amendment, that we put it beyond peradventure that that is the case, that they are deemed

to be managers under the act. Certainly great conflict was indicated in regard to the legal position yesterday.

The CHAIRMAN: If you exempt them because they are employees under the Aeronautics Act, you are importing something that should not be imported into this act. There may be some of these who do not exercise management functions. I do not know, and I would say neither do you.

Senator ROEBUCK: They said they were.

The CHAIRMAN: For anybody who exercises management functions in the grain trade, there will be an exemption in my opinion.

Senator THORVALDSON: But the minister said, "I believe some of these people"—and there are 5,000 of them—"exercise management functions, but not all of them."

The CHAIRMAN: Then why should we exempt all of them?

Senator McCUTCHEON: Because he took the position that unless a line elevator operator had employees working under him he was not a manager.

The CHAIRMAN: That was the minister's view here. Once this passes into law, the interpretation by the department may be the first interpretation, but it is not necessarily the last interpretation as to whether they are covered or not.

Senator McCUTCHEON: What is the objection to making it abundantly clear?

The CHAIRMAN: The only objection I can see is that the amendment was voted down.

Senator THORVALDSON: I want to remark again that there is complete conflict between the opinion given by our law clerk yesterday and the views of both the minister and, according to the evidence here yesterday, the heads of the department, the deputy minister and the Department of Labour, who have persistently maintained that elevator operators were not exempt, in the view of the department. All we are asking is that if this committee agrees that these people are managers and should be exempt, then we want to avoid protracted litigation on this point.

I am quite convinced, considering the conflicting views of the members of this committee and the department, that you will have lengthy litigation which will be very irritating to the grain industry in western Canada. Consequently, I think it is just good common sense that this committee enact the amendment which I suggested, and I would like to come back to it and discuss it.

The CHAIRMAN: The amendment has been voted on, so that business has been passed over. If there is another amendment you wish to propose, I am ready to accept it.

Senator THORVALDSON: Well, there will probably be another forum in which we can debate this matter.

The CHAIRMAN: Shall clause 3 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Part I, starting with clause 5. Are you ready for the question on clause 5? Shall clause 5 carry?

Hon. SENATORS: Carried.

Clause 6?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 7?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 8?

Some hon. SENATORS: Carried.

Senator McCUTCHEON: No.

The CHAIRMAN: Is an amendment proposed?

Senator McCUTCHEON: Yes. I would move that the word "regular" in line 41 be struck out and that there be substituted therefor "the minimum hourly rate prescribed by this act."

The CHAIRMAN: Senator, may I just make a comment? When that question was first raised my reaction was the same as yours. On reading it further it occurred to me that when they are talking about "regular rate" in connection with a minimum wage, the minimum wage is what they are referring to as the regular rate of pay.

Senator McCUTCHEON: I would not like to assume that is the minister's interpretation, and I think this is another case where we might as well make it abundantly clear. We are surely not going to put ourselves in the position where a man earning \$3 an hour should be paid \$4.50 an hour, if the bargain is that he should be paid \$3 or \$4 an hour?

Senator ROEBUCK: It is the regular thing to be paid time and a half for overtime.

Senator McCUTCHEON: Some people don't.

Senator ROEBUCK: Most people do. In nearly all the bargains made it is time and a half.

Senator McCUTCHEON: The running trades do not get any overtime.

Senator ROEBUCK: When they have overtime it is time and a half.

Senator McCUTCHEON: They don't. There have been references to that.

The CHAIRMAN: Actually, we are supposed to address the Chair when making statements rather than having personal arguments. It may well be that what is intended in clause 8 is to establish a minimum rate for overtime, the same as you establish a minimum rate for regular hours of work. That is quite a possible interpretation, and may be a very reasonable interpretation of section 8 that this is, in fact, establishing a minimum overtime rate of $1\frac{1}{2}$ times whatever you are paid regularly.

Senator FLYNN: I do not think this is the intention of the bill though.

Senator CONNOLLY (*Ottawa West*): The intention of the bill is surely to deal with minimum rates?

Senator FLYNN: It seems to me the general intention of the bill is to establish a floor for wages and hours of work, and so on and so forth.

The CHAIRMAN: Don't you think it would be included in that, the minimum rate or floor for overtime as it relates to those regular hours of work?

Senator FLYNN: I have seen very often that overtime up to a certain number of hours is not paid time and a half, but it is less than that.

The CHAIRMAN: Senator Smith.

Senator SMITH (*Queens-Shelburne*): I wonder if I could be of some assistance? I have been informed that an employee's regular rate is the rate he is actually receiving, not the minimum rate specified in the act.

Senator McCUTCHEON: That is the reason for my amendment.

Senator SMITH (*Queens-Shelburne*): I am also informed that the overtime provision is essentially a provision designed to restrict overtime work where it is not necessary, and to compensate an employee for having to work in excess of generally accepted standard hours where it is necessary.

An overtime rate based on the minimum rate would have very little significance, because only a very small proportion of employees subject to this bill

will be paid at or near the minimum rate. Time and a half the minimum rate is \$1.87½ an hour. The requirement to pay such a rate for overtime work would, of course, be meaningless for anyone employed at a regular rate above that level.

The requirement to pay time and a half the regular rate for overtime is the generally accepted method of controlling hours. This has been the method adopted in the United States Fair Labor Standards Act, and in Canada in the western provinces.

I have been asked if I would make that statement, so that it would be before the minister when he proposes to make use of the phrase "regular rates".

Senator McCUTCHEON: That being the circumstances, that bears out what I have suggested, and I move my motion, seconded by Senator Flynn.

Senator ISNOR: Mr. Chairman, may I suggest that instead of the word "regular" the word "agreed" should be used . . . "agreed rate"?

The CHAIRMAN: No, I do not think it would fit in at all.

In the light of what Senator Smith (*Queens-Shelburne*) has just said, I am ready to say that I think the scheme of section 8 is to establish a minimum overtime rate. I think that is the scheme, and that is consistent with the principle of the bill.

Senator McCUTCHEON: No, completely inconsistent, Mr. Chairman.

The CHAIRMAN: We have an amendment. Those who support the amendment, will you please raise your hand? Contrary?

The amendment is lost.

Senator McCUTCHEON: What happens to the collective agreements in these circumstances?

The CHAIRMAN: Clause 9, shall clause 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 10, shall clause 10 carry?

Hon. SENATORS: Carried.

Senator THORVALDSON: Mr. Chairman, after clause 10, that is the last clause in Part I, I wish to move an amendment. This will be an amendment to Part I and it will be numbered 10A and will read as follows:

This part does not apply to or in respect of an employee who is in charge of and is responsible for the care, custody and control of any work or undertaking, or an integral part thereof declared by the Parliament of Canada to be for the general advantage of Canada.

The CHAIRMAN: Senator Croll, do you wish to say anything?

Senator CROLL: We dealt with that motion already in the same words.

The CHAIRMAN: No, not exactly the same words. The intent was the same, yes, but the language is different.

Senator LEONARD: Is there any act other than the Canada Grain Act that this would cover? Would it be concerned with any trade other than the grain trade?

The CHAIRMAN: No, I don't think so. What about the Railways Act.

Senator THORVALDSON: I would like to explain my amendment. This amendment is suggested by Council for the United Grain Growers of Winnipeg for whom Mr. Runciman appeared yesterday. As you all know the grain trade in western Canada has been declared many years ago to be a work or undertaking for the general advantage of Canada. If this amendment were passed, the only effect it would have in regard to the grain trade is to make sure that the managers, the operators of grain elevators would not come within this act.

The CHAIRMAN: I don't think you mean that exactly, because as I recall it the wording of your amendment would include every employee. If you read again the amendment you propose I think you will find that it would cover every employee.

Senator THORVALDSON: No, I shall read the amendment again.

This part does not apply to or in respect of an employee who is in charge of and is responsible for the care, custody and control of any work or undertaking, or an integral part thereof declared by the Parliament of Canada to be for the general advantage of Canada.

In the case of an elevator in western Canada this could only apply to the person in charge, who is the operator,—the manager. It will not apply to any employees that might be under him in the work.

The CHAIRMAN: If he is a manager, he is exempt under the bill as it is.

Senator THORVALDSON: That is what we debated yesterday, and it is a matter of grave doubt in my judgment.

Senator ROEBUCK: We decided that in the vote already.

The CHAIRMAN: This is broader; that is why I am allowing the amendment.

Senator THORVALDSON: It is a question of law, in my judgment, as to whether these managers are all included in the category.

The CHAIRMAN: It is a question of fact—you have to make a finding of fact first as to whether or not the person is executing management functions.

Senator THORVALDSON: You will have 5,000 lawsuits on your hands.

Senator ISNOR: This is for emergency work only?

The CHAIRMAN: This is an amendment which would exclude the employees of grain elevators who have the "care, custody and control—"

Senator THORVALDSON: I think that limits the amendment to those with management functions in that industry.

The CHAIRMAN: If it limits it to management functions, we have already dealt with that. I have tried to help you out by saying it was broader.

Senator HUGESSEN: I am not at all sure that there are not other things that have been declared to be for the general advantage of Canada. I remember several provincial railroads which have been declared to be for the general advantage of Canada. This amendment might be dangerous unless it states clearly what it is intended to include.

Senator THORVALDSON: This amendment is very restrictive and applies only in respect of a manager who is in charge of and is responsible for the care, custody and control of any work. Surely that would cover people in management functions.

Senator ROEBUCK: That would take in the janitor since he is in charge of the plant.

The CHAIRMAN: Are you ready for the question? Those supporting the amendment please raise your hand.

Those opposing the amendment?

The amendment is lost. Section 10 carries.

We move now to part II. Shall section 11 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13 deals with handicapped employees. Shall section 13 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 14 deals with the making of regulations. Shall section 14 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, part III dealing with annual vacations. Shall section 15 carry?

Senator ISNOR: Not too fast, Mr. Chairman, not too fast.

The CHAIRMAN: Sorry. Section 15, shall that carry.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16, shall section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17, shall section 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18, shall section 18 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19, shall section 19 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 20 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 21, shall section 21 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 22 dealing with regulations in relation to annual vacations, shall section 22 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 23, repealing the Annual Vacations Act, shall section 23 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to Part IV; shall section 24 carry? That is the section dealing with general holidays. Shall section 24 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 25 dealing with entitlement to holidays, shall section 25 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 26, shall section 26 carry?

Hon. SENATORS: Carried.

Senator ROEBUCK: Yes, that is most necessary.

The CHAIRMAN: Section 27, shall section 27 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 28 dealing with substituted holidays, shall section 28 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 29 dealing with the situation where a person is paid on a weekly or monthly basis in relation to holidays, shall section 29 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 30 dealing with additional pay for holiday work, shall section 30 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 31, shall section 31 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 32, dealing with holiday pay, shall section 32 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 33 dealing with the conditions or qualifications for pay on a general holiday, shall section 33 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 34, shall section 34 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we come to part V. Section 35 provides for the authority to set up a Board of Inquiry under this Act. Shall section 35 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 36 provides for the appointment of inspectors under the Act, and sets out their duties. That is on page 14. Shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: And section 37 deals with the administration of oaths, shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 38, shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 39 which contains the provisions for information and returns and the keeping of records, shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 40, shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 41, shall that section?

Hon. SENATORS: Carried.

The CHAIRMAN: That is the section that deals with the pay statement to be furnished by an employer.

Section 42 deals with offences and penalties. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 43 is the procedure section in relation to that.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 44 provides for the statutory time limit for such proceedings.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 45 deals with the enforcement of the payment of arrears which an employer has withheld.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 46 deals with the confidential nature of the complaint. The identity of a person who makes a complaint is to be withheld.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 47 saves all civil remedies that an employee may have.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 48 deals with ministerial orders.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 49; shall it carry? It deals with the annual report which the Minister shall make to Parliament.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 50 deals generally with the making of regulations. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We come now to section 51 which contains special and transitional provisions. Shall section 51 carry?

Senator McCUTCHEON: No. Mr. Chairman, we have blithely passed all the sections relating to general holidays, and if I had thought that there was any chance of an amendment being passed I would have moved it at that stage. We have had some very strong evidence, particularly as regards the running trades on the railways and the flight crews on the air lines, that the provision of regular holidays is something that has never been included in any collective agreement. The evidence is that there is no such provision in any agreement that the running trades have with any railway in North America. We have had evidence that under similar acts in the United States flight crews have been excepted, and we have the minister's evidence that there is no power in this bill given to any person to relieve an industry, or a group in a particular industry—the groups I am referring to, for example—from the provisions of Part IV of the bill.

This section will probably need a number of amendments, but I want to move, seconded by Senator Flynn, that section 51 be amended so that the minister may have the same discretion to except an industry from the application of Part IV as he now has with respect to Part I, or that subsequent deferments can be ordered by the Governor in Council after receiving the report of the inquiry.

The CHAIRMAN: Does your amendment propose that in subsection 1 of section 51 there be added the words "and Part IV" after the words "Part I"?

Senator McCUTCHEON: No, I think you will have to put in more words than that. After "Part I" you might add the words "or the provisions of Part IV", and similar amendments would have to be made throughout the section.

The CHAIRMAN: Is that the only place in the section where Part I is mentioned? No, it is mentioned in subsection 2.

Senator McCUTCHEON: Yes, it is mentioned at least three more times.

The CHAIRMAN: Your amendment is that after "Part I", wherever those words appear in this section, there shall be added the words "and the provisions of Part IV"?

Senator McCUTCHEON: Yes.

Senator ROEBUCK: I recall that the minister himself said that he hoped we would not give him that jurisdiction. He told us that if the bill did not exclude that jurisdiction he would not want it. I do not think we should thrust upon him a discretion that he does not want, and does not think necessary.

Senator McCUTCHEON: As was mentioned yesterday, how do you determine what one and a half times the regular pay of a member of a flight crew is, when such a flight crew member is going to be given by Parliament holidays for which he has not bargained, and this notwithstanding the fact that he works only 85 hours a month.

The CHAIRMAN: I think you are making an assumption, senator, that in my view is not warranted, because you are ignoring completely the application of section 4 of the bill. These groups of people you are talking about may well come under section 4, in that they may enjoy much more favourable benefits than this bill provides.

Senator McCUTCHEON: There was no witness who seemed to have the optimism that you have displayed throughout, Mr. Chairman.

The CHAIRMAN: Do not try to put a blight on my optimism.

Senator FLYNN: Is there any provision in this bill to the effect that if a collective agreement offers more benefits than does the bill then the collective agreement would override the provisions of the bill, and that the minister can say that?

The CHAIRMAN: That is where Senator McCutcheon and I have a difference of viewpoint. I say that section 4 does provide that because in my view section 4 is not intended to say that you can. . .

Senator McCUTCHEON: Section 4?

The CHAIRMAN: Yes, section 4 of the bill. That is not intended to say that you can pick the best parts of what the bill can give and then the best parts of the conditions you now enjoy, and have the best of all worlds. I think you have got to take either one world or the other and decide in which one you are going to live.

Senator HUGESSEN: It is not too clear, though.

The CHAIRMAN: It may not be too clear, but that seems to be the only reasonable interpretation.

Senator LAMBERT: Mr. Chairman, do I not understand from the evidence that was given yesterday, and the assurance that was given by the minister, that there are certain flexible aspects to section 4 and to subsection 3 of section 3 that would enable him to make an exception of the application of this act to country elevator operators. I understand that would make a great deal of difference.

Senator McCUTCHEON: We are talking about general holidays, senator, and I directed my remarks to the running trades and the flight crews. The minister said quite clearly that he has no discretion in that area. I am suggesting that he be given that discretion.

Senator LEONARD: Section 27 is another section that excludes collective bargaining agreements.

Senator McCUTCHEON: Collective bargaining agreements contain no provisions with respect to regular holidays.

Senator ROEBUCK: Mr. Chairman, let me read the clause upon which you rely. This is clause 4, which reads:

. . . but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

Could anything be more clear?

Hon. SENATORS: Question.

The CHAIRMAN: Is there any more discussion?

Senator ROEBUCK: I have been engaged in negotiating contracts between the railroads and their employees for 30 years, and I know very well that the fact that they do not get holidays is compensated for in other ways. I cannot tell you the details now because my memory is not that good.

Senator McCUTCHEON: Then why not support the amendment and make it clear that the minister can wipe out that provision?

Senator ROEBUCK: Because it is already clear.

The CHAIRMAN: Are you ready for the question? Those in favour of the amendment please indicate. Those to the contrary? I declare the amendment lost. Section 51 carries.

Section 52?

Senator FLYNN: I do not know whether this is the proper place for me to move a new section, namely, 52A. Section 51(2) gives the Governor in Council the power, on the recommendation of the minister, to defer or suspend the operation of Part I in respect of the federal work, undertaking or business . . .

The CHAIRMAN: Are you now reading section 51?

Senator FLYNN: Section 51(2), the last few lines.

The CHAIRMAN: Yes.

Senator FLYNN: This power of the Governor in Council is indefinite—the suspension can be indefinite for years and years. Everywhere in the act power is given to the minister, or the Government, to amend or modify the act, and it seems to me that this power here goes really too far in that the deferment can be permanent. It also seems to me that that is a strange situation where the Governor in Council could say, indefinitely, with respect to an act like that, that it will not apply to a certain trade or occupation.

The CHAIRMAN: I do not think that in subsection (3) of section 51 you could have a deferment or suspension order by the Governor in Council that was not for a period.

Senator FLYNN: Well, it has to name a period.

The CHAIRMAN: That is right.

Senator FLYNN: But if it names five years?

The CHAIRMAN: It is still a definite period.

Senator FLYNN: May I suggest that subsection (5) would allow the Governor in Council to prolong—

The CHAIRMAN: Or vary.

Senator FLYNN: —indefinitely, to make it for one year, prolong it for another year, and so on, indefinitely.

The CHAIRMAN: Or he could revoke.

Senator FLYNN: This is rather superfluous.

The CHAIRMAN: I don't know.

Senator FLYNN: My submission is that in any event under this section 51 the Government may suspend indefinitely the application of the act in certain areas. There is no doubt about that.

The CHAIRMAN: That would be the effect.

Senator FLYNN: I do not argue this interpretation. My suggestion would be that we should propose some stop or brakes to this indefinite power and I was going to move that we add a section 52A in substance as follows, though I am willing to change the wording:

52A. An order in council passed under the authority of paragraph (2) of section 51 shall lapse after one year of its adoption, if it has not been approved by Parliament in the meantime.

Senator ROEBUCK: One of the permanent exemptions would be for the air flight crews.

The CHAIRMAN: The intention is clear, in Senator Flynn's amendment.

Senator FLYNN: My intention is that an amendment should be brought before Parliament, when it is desired to give these exemptions, instead of it being done by order in council on an indefinite basis.

The CHAIRMAN: Honourable senators, are you ready for the question?

Hon. SENATORS: Yes.

The CHAIRMAN: Those supporting the amendment please so indicate. Contrary? The amendment is lost. Clause 52—shall clause 52 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 53, shall clause 53 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 54 prescribes the commencement of these various parts. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Some hon. SENATORS: Carried.

Some hon. SENATORS: On division.

The CHAIRMAN: It is carried, on division. Shall I report the bill without amendment?

Some hon. SENATORS: Carried.

Some hon. SENATORS: On division.

The CHAIRMAN: It is carried, on division.

The committee adjourned.

Appendix "C"

Provincial Minimum Wage Rates

In each of the provinces a general hourly or weekly minimum rate applies to most types of employment. In addition, special minimum rates have been set in most provinces which are applicable to a specified industry, occupation or class of employees.

General Rates for Experienced Workers

The general rates are as follows:

Newfoundland: 50 cents an hour (women); 70 cents an hour (men)

Prince Edward Island \$1 an hour (men)

Nova Scotia: Rates effective from February 20, 1965
(17 years of age and over)

Workers under collective agreement excluded

		Male	Female
Halifax, Dartmouth, Sydney	Zone IA	\$1.05	.80
New Glasgow, Truro, Amherst, Yarmouth	Zone 1B	.95	.70
Rest of Province	Zone II	.85	.60

New Brunswick: \$1.05 an hour for construction, mining, primary transportation, and logging, forest and sawmill operations; 75 cents an hour for manufacturing, food processing and wholesale and retail trade; 65 cents an hour for service industries.

Quebec: 70 cents an hour (Greater Montreal area); 64 cents an hour (elsewhere in province). In addition to the rates set by minimum wage orders, legal minimum rates of pay are established for about 250,000 employees in Quebec by the extension of the provisions of collective agreements (decrees) under the Collective Agreement Act.

Ontario: \$1 an hour (Oshawa-Toronto-Hamilton zone and for men in the other major industrialized areas). For other workers lower rates have been set, to increase at regular intervals, with the result that a minimum rate of \$1 an hour will be in effect for employees of both sexes throughout the province by the end of 1965.

Manitoba: 75 cents an hour (cities); 70 cents an hour (rural).

Saskatchewan: \$36.50 a week (ten cities and a five-mile radius);
\$34.50 a week (elsewhere in province).

Alberta: \$34 a week (centres over 5,000 population);
\$30 a week (elsewhere in province).

British Columbia: \$1 an hour.

Special Rates

The special minimum wage rates set for an industry, occupation or class of employees may be higher or lower than the general rate but in many cases are higher, particularly where a rate is set for a craft or skill.

Examples of special rates which are higher than the general minimum rate set for the province and which affect substantial groups of employees are as follows:

Quebec:	\$1.10 an hour for logging operations \$1.10 or \$1 an hour for sawmills, depending on zone. 90 cents an hour for employees of municipal and school corporations.
Ontario:	\$1.25 an hour for the construction industry in most parts of the province.
Saskatchewan:	\$1 an hour for logging operations \$1.05 an hour for truck drivers.
British Columbia:	\$2 an hour for construction tradesmen; \$1.30 an hour for other employees in the construction industry \$1.50 an hour for ambulance drivers \$1.75 an hour for tradesmen in ship and boat building; \$1.25 an hour for other employees in shipyards \$2 an hour for automotive mechanics; \$1 an hour for other garage employees \$2 an hour for machinists, moulders, refrigeration and sheet metal trades.



Second Session—Twenty-sixth Parliament

1964-65

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To which was referred the Bill C-123, intituled: "An Act to amend certain Acts administered in the Department of Insurance".

The Honourable PAUL H. BOUFFARD, *Acting Chairman*

WEDNESDAY, MARCH 17, 1965

THURSDAY, MARCH 18, 1965

WITNESSES:

Department of Finance: Hon. Walter L. Gordon, Minister.
Department of Insurance: Mr. R. Humphrys, Superintendent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gélinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 11th, 1965.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Hugessen, for second reading of the Bill C-123, intituled: "An Act to amend certain Acts administered in the Department of Insurance".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 17th, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

The Chairman having vacated the Chair, it was Agreed that the Honourable Senator Bouffard become Acting Chairman.

Present: The Honourable Senators Bouffard, (*Acting Chairman*), Aseltine, Baird, Blois, Brooks, Burchill, Connolly (*Ottawa West*), Croll, Davies, Fergusson, Flynn, Gershaw, Gouin, Hayden, Hugessen, Isnor, Kinley, Lang, Leonard, McCutcheon, McKeen, McLean, Pearson, Power, Taylor, Thorvaldson, Walker, White, Willis and Woodrow—30.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-123, An Act to amend certain Acts administered in the Department of Insurance, was read and considered.

The following witnesses were heard:

Mr. G. D. Finlayson, counsel for the sponsors of World Mortgage Corp.

Mr. R. Humphrys, Superintendent of Insurance.

At 10.45 a.m. the Committee adjourned.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators Bouffard (*Acting Chairman*), Beaubien (*Provencher*), Croll, Davies, Fergusson, Gélinas, Gouin, Hayden, Hugessen, Isnor, Kinley, Lang, Leonard, McCutcheon, McKeen, Power, Reid, Taylor, Willis and Woodrow—20.

The following witness was heard:

Mr. R. Humphrys, Superintendent of Insurance.

At 3.00 p.m. the Committee adjourned.

At 4.45 p.m. the Committee resumed.

Present: The Honourable Senators Bouffard (*Acting Chairman*), Aseltine, Beaubien (*Bedford*), Burchill, Cook, Gouin, Hayden, Hugessen, Isnor, Kinley, Lang, Leonard, McCutcheon, McKeen, McLean, Pouliot, Power, Taylor, Walker and Willis—20.

The following witness was heard:

Mr. R. Humphrys, Superintendent of Insurance.

At 5.50 p.m. the Committee adjourned until Thursday, March 18, at 9.30 a.m.

Attest.

F. A. JACKSON,
Clerk of the Committee.

THURSDAY, March 18th, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Bouffard (*Acting Chairman*), Beaubien (*Provencher*), Blois, Brooks, Burchill, Connolly (*Ottawa West*), Croll, Ferguson, Gouin, Hayden, Hugessen, Isnor, Kinley, Lang, Leonard, McCutcheon, Pearson, Reid, Taylor, Thorvaldson, Walker, White, Willis and Woodrow.—24

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-123, "An Act to amend certain Acts administered in the Department of Insurance", was further considered.

The following witnesses were heard:

Hon. Walter L. Gordon, Minister of Finance.

Mr. R. Humphrys, Superintendent of Insurance.

On Motion duly put it was Resolved to report the said Bill without amendment.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 18th, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-123, intituled: "An Act to amend certain Acts administered in the Department of Insurance", has in obedience to the order of reference of March 11th, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

PAUL H. BOUFFARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 17, 1965

The Standing Committee on Banking and Commerce to which was referred Bill C-123, to amend certain Acts administered in the Department of Insurance, met this day at 9.30 a.m.

Senator SALTER A. HAYDEN (*Chairman*) in the Chair.

The CHAIRMAN: I call the meeting to order. We have before us for consideration Bill C-123.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Senators, as I indicated in the Senate the other day, I do not propose to preside as chairman of this meeting. I have spoken to Senator Bouffard. Is it the committee's wish that Senator Bouffard now take the chair?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN (*Senator Bouffard*): Thank you very much, senators.

Senator McCUTCHEON: It is not often that you get a vote of confidence like that.

The ACTING CHAIRMAN: No, it is not, and I do not ask for it very often, either. If I am permitted, it is my intention today to sit until a quarter to eleven.

Senator McCUTCHEON: And no later.

The ACTING CHAIRMAN: That is right. At a quarter to eleven we shall adjourn until 2 o'clock and sit before the Senate meets this afternoon, and after that I propose that we resume when the Senate rises. If it is agreeable to the committee I propose to sit right through today. I think this morning there is an important caucus for the Conservative party, and I would not want to deprive anybody of the pleasure of attending it. Also, we have our own caucus at 11 o'clock.

Senator McCUTCHEON: You worry about yours, Senator Bouffard. Do not believe what you read in the papers about ours.

The ACTING CHAIRMAN: As you know, this bill concerns insurance companies, trust companies and loan companies. It was my intention to ask Mr. Humphrys, the Superintendent of Insurance, to explain the bill for us, but there is a witness here who has to go back to Toronto. We can accommodate him by hearing him now, after which we shall hear Mr. Humphrys. The first person appearing before us this morning is Mr. G. D. Finlayson, who has to return to Toronto later this morning.

Senator LEONARD: Mr. Chairman, at the outset may I be permitted to disclose my own personal interest in the bill. I am a director of two companies—

one a loan company, the Canada Permanent Mortgage Company, and one a trust company, the Canada Permanent Trust Company, both of which are federally incorporated and both of which are under the jurisdiction of the Department of Insurance, and both of which are affected by this legislation. On that account I do not propose to vote or take an active part in the proceedings of the committee.

Senator McCUTCHEON: In the same connection I might say that I am a director of the Montreal Trust Company which, I am happy to say, is not federally incorporated.

The ACTING CHAIRMAN: No, it is a provincial trust company.

Senator McCUTCHEON: I am also chairman of the board of the National Life Insurance Company which, while it is affected by the investment provisions of this bill it is not affected by the restrictive provisions. I shall take part in the proceedings, and vote.

The ACTING CHAIRMAN: I also am a director of the Administration and Trust Company which is a provincially incorporated trust company and has no interest in the bill.

Senator McCUTCHEON: We never knew before we saw this bill how opportune it was that we were provincially incorporated.

Senator THORVALDSON: While we are making these confessions I too must confess that I am the president of a federal mortgage corporation and the director of a life insurance company and a trust company. I do not propose to vote on this bill.

Senator HAYDEN: Mr. Chairman, my position is, I think, well known. I stated it in the Senate, and it is a matter of record. I do not think I need repeat it here.

The ACTING CHAIRMAN: Is it the wish of the committee that we hear Mr. Finlayson now and thus give him an opportunity of returning to Toronto today?

Hon. SENATORS: Agreed.

Mr. G. D. Finlayson, Counsel for sponsors of World Mortgage Corporation: Mr. Chairman and honourable senators, I am appearing for the sponsors of a company which is proposed to be incorporated called The World Mortgage Corporation, and I want to address a few remarks, if I may, to certain provisions of Bill C-123.

Bill C-123 now accepts the principle of a parent-subsidiary relationship between loan and trust companies. It also provides that if a loan company holds more than 10 per cent of the shares of the trust company, it will be subject to an additional limitation on its borrowing power computed by reference to the combined position of the two companies.

It appears from the testimony of Mr. R. Humphrys that a prime objective of the additional limitation is to prevent, where there is a parent-subsidiary relationship, the use of the same capital twice so as to provide margin for both the borrowings of the trust company and of the loan company. Additionally, it has been stated by the minister "that consolidation is necessary in order that the borrowing limit be effective," adding that "where parent-subsidiary relationships are allowed, it is most important to ensure that assets are not inflated by carrying shares of the subsidiary on the books of a parent at values in excess of the shareholders' equity in the subsidiary."

The minister also proceeded to say:

It would be most dangerous to permit a company to treat as an asset, held against the deposit liabilities an estimate of future earnings, whether this were done directly by inflating the assets of the company or indirectly by establishing a parent subsidiary relationship.

We have made representations regarding the proposed additional limitation which it is feared frustrates the proposal for World Mortgage Corporation, a company which is designed to provide a large volume of mortgage financing. However, careful study has been given to the views expressed by honourable members and by the Superintendent of Insurance, and our position has also been re-examined with a view to meeting, if possible, objections which have been taken to our proposals.

The main issue can be stated fairly simply. We have contended, supported by expert evidence, that the shares of a subsidiary trust company—in this case, the subsidiary company being Eastern & Chartered Trust Company—are good and negotiable assets representing an equity in a stable business and that they ought to be accepted on the same footing as the common shares of industrial companies without the imposition of the additional limitation.

The Superintendent of Insurance, on the other hand, expressed the view stated above and indicated that without the additional limitation, the right to create a parent subsidiary relationship would be open to possible abuse and might result in unjustified pyramiding on the same asset base. From Mr. Humphrys' remarks it appears that he believes the problem to be in part a question of degree. While the legislation would apply to any case where a loan company owns more than 10% of a trust company, he has stated "if there were no exceptions to the rule that a loan company could not buy more than 30% of the shares of any other company, then I believe there would be no need for a consolidation rule". We believe that the question of degree also arises with regard to the relationship between the book value of the trust company's shares in its accounts—i.e., the amount of its capital and reserve for each share outstanding—and the market value of these shares established by trading between investors. If the shares have an established market value in excess of the book equity per share, there would, at the most, be only a partial duplication in the use of any assets to margin liabilities.

Our position is, and has always been, that the margin provided to cover the trust company's liabilities is not its share capital—since the trust company does not own its shares—but it is an amount of mortgages and other assets equal to its own capital and reserve. Inasmuch as investment of the trust company's own funds in mortgages is further margined by a minimum of $\frac{1}{3}$ in market value over the loan amount, there is additional protection for the trust company's own funds.

On the other hand, any margin provided against the loan company's liabilities by its ownership of the trust company's shares is different in form, in characteristics and in liquidity from the assets which margin the trust company's liabilities. It also differs in value from the book equity at which these shares appear in the trust company's accounts and which effectively measures the margin for the latter's borrowings. In the case of Eastern & Chartered Trust Company, the market value of approximately \$50 represents a substantial premium above book equity. The premium of market value over equity of "blue chip" corporation shares in which a loan company may invest its funds up to 30% of the outstanding shares varies considerably, and is anywhere up to 400% and over of the actual book equity of such corporation shares. As we have pointed out, the premium reflects in a substantial degree the value of the service division of the business—in the case of a trust company, the administration of many estates and trusts having a large aggregate value—as well as the potential of the particular company, its growth in assets and in future earnings. In the case of a trust company, the business of administration of estates and other fiduciary services, involves little of the trust company's capital, but it is the source of a substantial flow of income.

If one were to accept the premise, and we are willing to concede, that the same underlying assets should not be used, directly or indirectly for margin

purposes, the logical conclusion, it is submitted, would be that in any test based on the combined position of the companies the deduction from the combined assets should not be the cost of the trust company's shares to the loan company but the lesser of this cost and the book value of the equity behind these shares as shown by the accounts of the trust company, i.e., the cost or the book value whichever is the lesser. It is only an amount equal to the latter which will have been used to margin the borrowings of the trust company and this is the maximum amount which should be excluded on any contention that the same underlying assets must not be used twice for margining purposes. We submit that if the Superintendent of Insurance and the Minister cannot see their way clear to recommend the acceptance of submissions of counsel made at the hearings, an amendment to the Bill to reduce the deduction for inter-company holdings along the foregoing lines would be appropriate and would provide full protection to loan company depositors and to the holders of their debentures. Specifically, it would meet any possible contention that the same assets are doing double duty for margin purposes. It recognizes quite properly the dual character of the trust companies and of values in excess of book value which underly the market for their shares. It gives the same recognition to these additional values arising from the trust and estate business and from other factors as it would to established market values for other service businesses which are publicly owned, or to the excess of market over book value of industrial companies. As has been pointed out during the hearings, even the best industrial companies (with the possible exception of utilities) rarely have the stability of earning power which flows from the administration of a large volume of trusts and estates. The shares of good industrial companies as has been pointed out, usually sell at a substantial premium over their book value.

It is worth emphasizing that while a loan company may legally and quite properly acquire 30% of the shares of any qualified financial or industrial company, other than a loan or trust company, it may include such assets in its accounts at the price at which the shares were acquired even though such price represents a substantial premium of many times the actual book equity of such shares. In fact, the Minister in addressing the Standing Committee on Banking and Commerce on November 26, 1964, stated that "in considering investment powers, it is essential to keep in mind that the purpose of having any legislative limitation on the investment powers of insurance companies, trust companies, and loan companies, is to safeguard the interests of those who have entrusted funds to them, whether in the form of insurance premiums, savings deposits, or money lent through purchase of debentures or guaranteed investment certificates. The investment provisions should therefore be so drawn as to establish a general framework of a good quality of investment and care must be taken in making changes that broaden this framework. It is to be recognized at the same time that the pool of assets accumulated by these companies forms a very important source of investment capital in the Canadian economy, and for this reason it is in the public interest that these funds be allowed to play a useful and flexible part in the development of the economy".

Bill 123 reduces the present requirement for a 7 year dividend record to 5 years, and a new earnings test is introduced to qualify common shares on an earnings basis, regardless of dividend record. The maximum limit on investment in common shares is increased from 15% to 25% of the company's assets and, as well, the basket clause for insurance companies is increased from 5% to 7%. Additionally, a further broadening of investment powers is brought about by permitting companies to lend up to $\frac{3}{4}$ of the value of real estate instead of $\frac{2}{3}$ and insurance companies are given the power to invest in subsidiary real estate companies, non-resident life companies and general insurance companies without legislative limitation. All these broaden the investment powers of the respective companies and it seems that if such broadening is justified, then

there is no justification for restricting a loan company by excluding from its equity base the amount by which the cost of shares of a subsidiary trust company exceeds the equity value of such shares, particularly, if the shares are listed or traded on a recognized stock exchange in Canada and the price paid represents a fair market value.

We acknowledge that it is important to get this Bill through quickly since the companies concerned with the other provisions are awaiting its passage. Accordingly, we do not wish to impede its progress but wanted the opportunity to record our views in the expectation that they will be well taken and that at some future date appropriate consideration will be given.

The ACTING CHAIRMAN: Are there any questions?

Senator CROLL: What happens to your bill now?

Mr. FINLAYSON: At present it is standing on the Order Paper in the House of Commons, having received first reading. Certain sections of it will not be necessary in the event that Bill C-123 is passed; but, as I understand it, if Bill C-123 is passed in its present form there will be no point in proceeding with the World Mortgage Corporation bill.

Senator CROLL: You are not proceeding with the other aspects of the World Mortgage Corporation?

Mr. FINLAYSON: As I understand it, it is useless to proceed with the World Mortgage Corporation within the present framework, if Bill C-123 is passed. It would not be economical in its present form.

Senator WALKER: Mr. Finlayson, do I understand that you are satisfied with Bill C-123?

Mr. FINLAYSON: No, I am not satisfied.

Senator WALKER: But you are content it be passed in its present form, or are you objecting to it, and if so what part would you like amended?

Mr. FINLAYSON: I am objecting to the bill, but, on the other hand, I appreciate that it is important that the other provisions in the bill be enacted. All we can do, we feel, usefully, is to state our objections to the bill. We do not want to prevent it being passed, because it has a lot of useful provisions in it. However, we want to state our position clearly, and we hope that in good time we shall be able to persuade the legislature with our views and that they will prevail.

Senator WALKER: On the question of this mortgage bill, do I understand you to say it was amended in the House of Commons to bring it within the mind of Bill C-123?

Mr. FINLAYSON: No, it has not been amended to date. We had in mind that there were certain provisions in the bill, which is Bill S-32 in the Senate which are no longer necessary by reason of the provisions of Bill C-123. When this bill was passed by the Senate there was a prohibition against a loan company loaning more than 30 per cent of the shares of a trust company. Now, under Bill C-123 that restriction has been removed. Bill S-32 is the bill to incorporate the World Mortgage Corporation.

Senator CROLL: Do I understand that you are proceeding with the bill which in the other place will incorporate a loan company?

Mr. FINLAYSON: Yes.

Senator McCutcheon: Mr. Finlayson says that if that bill passes, there is no point in proceeding with the present bill.

Mr. FINLAYSON: In its present form. Just what changes will require to be made I do not know right at the present time.

Senator WALKER: Do I understand that because of Bill C-123 you are going to tailor the bill in the House of Commons to meet the provisions of Bill C-123 that is passed; is that correct?

Mr. FINLAYSON: It is a little awkward for me to answer. Certainly the sponsors of the World Mortgage Corporation do not propose to abandon the World Mortgage Corporation. I do not know what changes are going to have to be made to make this economically feasible, but certainly we are going to proceed with the World Mortgage Corporation. I cannot answer in what form we will proceed with this.

Senator WALKER: I hope you will go ahead with it, because we have been applying for six or seven years to get such people to make loans on mortgages, and if you are thinking of abandoning it—

Mr. FINLAYSON: That is putting it a little too strongly. We do not propose to abandon it, that is for certain.

Senator WALKER: I do not know anything about the restrictions that you propose be put on it, but if there is anything in this that you do not like, let us hear about it.

Mr. FINLAYSON: As I thought I had indicated in my presentation, the objection that we have to Bill C-123 is in section 42.

Senator McCUTCHEON: Section 42(3).

Mr. FINLAYSON: Amending section 68, and if you look over on page 56 of the pamphlet copy, on the last page, it sets out what the borrowing base for the loan company is to be, and subsections (a) and (b) in effect say that you combine the assets of the loan company and the liabilities of the loan company with those of the trust company on a consolidated basis. In computing the combined assets of the loan company and the trust company you must exclude for purposes of computing your borrowing base the value of the trust company's shares on the loan company's books. Now, in our case it is proposed that the World Mortgage Corporation is to acquire the shares of the Eastern and Chartered Trust Company. Those shares at the present time have a market value of approximately \$50 a share, and it was proposed initially that in including the borrowing base for the World Mortgage Corporation we would include \$50 per share representing the value of the Eastern Chartered Trust Company shares.

Senator KINLEY: It is \$52 today.

Senator McCUTCHEON: That viewpoint you expressed was put forward very clearly by the sponsors of the World Mortgage Corporation before this committee. The then Superintendent of Insurance expressed his views, which are similar to the views, I understand, being expressed by the present Superintendent. Nevertheless, this committee, and subsequently the Senate, approved and passed the bill. Is that correct?

Mr. FINLAYSON: The World Mortgage Corporation?

Senator McCUTCHEON: Yes.

Mr. FINLAYSON: Yes, that is correct.

Senator McCUTCHEON: Passed the bill, having heard the representations as to the intention which you have just made?

Mr. FINLAYSON: That is correct.

Senator McCUTCHEON: Thank you.

Senator WALKER: Well, is this coddling your bill that we passed?

Mr. FINLAYSON: Yes, Bill C-123 in its present form does coddle us, because we would not now be permitted to include the \$50 per share in our borrowing base. In other words, our borrowing base is going to be shrunk by this \$50 a share.

Senator THORVALDSON: In other words you are going to be living with a book value?

Mr. FINLAYSON: No, no value at all under Bill C-123.

Senator McCUTCHEON: What is your intermediate suggestion?

Mr. FINLAYSON: Our intermediate suggestion that we have now is that instead of talking in terms of giving us no value whatsoever for Eastern Chartered Trust Company's shares, we should be permitted to include in our borrowing base the difference between the book value and the market value. The book value at the present time is approximately \$26 a share, and the market value is \$50 a share.

Senator McCUTCHEON: Cut by 50 per cent instead of 100 per cent?

Mr. FINLAYSON: Yes.

Senator WALKER: Why? Book value does not mean anything, does it?

Mr. FINLAYSON: Well, that is quite true; but we are in the position that we want to salvage as much as we can from our present situation. Representations were made to the Banking and Commerce Committee of the House of Commons that we should be entitled to have the full \$50.

Senator WALKER: We passed it, too.

Mr. FINLAYSON: I was referring to representations in the Banking and Commerce Committee of the House of Commons, and those submissions were not given effect to by the committee, and the bill in its present form does not reflect the amendments we proposed. As an intermediate step we hope we can perhaps educate the legislature as to the propriety of our proposal. We are coming down a bit and saying that if we cannot have the full \$50 a share, at least we can have the difference between the book value and the market value. After all, the objection with regard to the view put forward by the Superintendent of Insurance is that we are using the same money twice. The trust company is using \$26 as a borrowing base. We acquire the trust company shares, and we use it again, but the only duplication, if there is any duplication, is with respect to the book value, and we suggest that the very real value, which is the difference between book value and market value, is not being borrowed upon and we should have the opportunity of including that at least in our borrowing base.

Senator WALKER: That sounds reasonable. Perhaps we shall hear about that from the Superintendent.

Senator LANG: As to your position today, Mr. Finlayson, I take it from what you have said that you are not pressing for this committee to consider amending the bill along the lines of your suggestions, but that you are basically here to express your position for future purposes. Am I correct in that assumption?

Mr. FINLAYSON: I think that puts it accurately, Senator Lang. We do not want to hold up the bill because there are useful provisions in it, and I appreciate that because of the procedures involved any amendment by the Senate would cause delay in the passage of the bill as a whole. However, we are not retreating from any position we have taken. We hope our position will be given effect to sooner or later.

Senator LANG: But, Mr. Finlayson, you would not wish your position today to prejudice passage of the other sections?

Mr. FINLAYSON: No. There are sections, including increasing the lending power from two-thirds to 75 per cent on mortgages, and things of that nature, we fully support.

Senator WALKER: In other words, you are getting yourself on the record.

Mr. FINLAYSON: Yes.

Senator McCUTCHEON: If you followed the proceedings in the other place last night you might feel we have plenty of time to have the bill go through and be enacted.

The ACTING CHAIRMAN: We cannot rely very much on that. Are there any other questions to Mr. Finlayson? Thank you, sir, very much.

I think it would be the time now to get Mr. Humphrys, the Superintendent of Insurance, to explain the whole bill and give the information to the committee that is necessary, unless the committee has other suggestions to make.

Senator McCUTCHEON: Mr. Chairman, I was wondering if Mr. Humphrys could make his statement now, and if we could postpone questioning until we resume at 2 o'clock.

The ACTING CHAIRMAN: That is what I would like to do, because it will not give much more time for questioning.

Senator McCUTCHEON: I have another appointment now, and if I can rely on that, Mr. Chairman, I will be here at 2 o'clock.

The ACTING CHAIRMAN: That is fine. Is it agreed by the committee that we hear Mr. Humphrys, and that the questioning of Mr. Humphrys will be postponed until 2 o'clock?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: All right, Mr. Humphrys, would you give your explanation of the bill?

Mr. R. Humphrys, Superintendent of Insurance, Department of Insurance: Mr. Chairman, honourable senators: I did not propose to make a very lengthy initial statement. Senator Lang, in presenting the bill for second reading, explained the main heads of it, so I will not take the time of the committee to go over that same ground in great detail. I will, however, make a few initial remarks.

The principal purpose of the bill is to amend the investment powers of insurance companies, trust companies and loan companies that are subject to federal jurisdiction, and to enact a measure that will control to some extent the proportion of shares of these companies that can be owned by non-residents.

In addition to these main purposes, there are a number of other provisions in the bill, some of which are quite important, and others which deal really with only minor technical matters.

So far as insurance companies are concerned, in addition to the changes in the investment powers and the question of foreign ownership of shares, there are points dealing with the qualification for shareholders' directors, power for life insurance companies to subdivide the par value of their shares, power for life insurance companies to own subsidiary companies in certain circumstances. This is quite a new departure, since it has not hitherto been possible for a life insurance company to own a subsidiary of any type.

The main portion of the bill deals with Canadian insurance companies, but it also amends the investment provisions applicable to British and foreign insurance companies, to keep the provisions applicable to them consistent with the investment powers for Canadian companies. The legislation limits and defines the classes of investment that these non-resident companies are required to maintain in Canada to cover their Canadian liabilities. These are kept in line with the types of investment eligible for Canadian investment companies.

So far as the trust companies and loan companies are concerned, the amendments follow quite closely some of the amendments made for the insurance companies. The investment powers as respects mortgages and common shares are changed in a manner similar to that for insurance companies. They are given power to sub-divide the par value of their shares. The Governor in Council is given power to grant a French or English version of the corporate name, and there are the provisions changing the borrowing limits applicable to these companies.

One of those amendments has already been referred to by the previous witness, and there are additional amendments affecting those borrowing powers that will, in some respect, expand them, as well as the particular amendment that was already discussed.

The bill looks quite formidable, but it deals with four different acts, and there is a good deal of repetition in it. It is in four parts.

The first part of the bill deals with the Canadian and British Insurance Companies Act, and even there the investment provisions are repeated, once for Canadian companies and again for British companies.

The second part deals with the Foreign Insurance Companies Act, and enacts the same changes as the first part does for British companies.

The third part deals with the Trust Companies Act.

The fourth part deals with the Loan Companies Act.

Mr. Chairman, that is all I had in mind in the way of an initial statement. I thought that I could deal with other matters as we went through the bill clause by clause.

The ACTING CHAIRMAN: Would you care to make any kind of statement in answer to the previous witness, Mr. Finlayson?

Senator HAYDEN: Mr. Chairman, all that I was going to suggest was that maybe that would come more appropriately when we are looking at those two sections that cover that situation.

The ACTING CHAIRMAN: Yes.

Senator HAYDEN: However, there are two or three general questions I have to ask Mr. Humphrys.

One is: What material did you have, what representations were made as a result of which you have incorporated in this bill the increase in the borrowing limit from 66 $\frac{2}{3}$ to 75 per cent on real estate?

Mr. HUMPHRYS: The limit of mortgage loans on the security of real estate?

Senator HAYDEN: Yes.

Mr. HUMPHRYS: The Canadian Life Insurance Officers Association made representations to the Government seeking that increase. They had made representations at earlier times when other amendments were under consideration.

You will recall that in 1960 the limit was raised from 60 per cent to 66 $\frac{2}{3}$ per cent. They made further representations last year requesting an increase to 75 per cent.

Senator HAYDEN: No, but what was the underlying basis?

Mr. HUMPHRYS: There were, I think, three underlying factors.

In their report, the Royal Commission on Banking and Finance expressed the view that it would be appropriate to raise the limit to 75 per cent.

A number of States in the United States, usually regarded as having sound insurance legislation, had made similar amendments in their laws permitting insurance companies to go up to 75 per cent.

As a consequence, the United States insurance companies doing business in Canada and British insurance companies doing business here were making loans on their own home-office account in excess of the two-thirds limit. This put our Canadian companies in an unfavourable competitive position, in the sense that the competing companies could pick up what they thought to be the cream of loans at a high ratio, whereas our companies could not. So, in order to put them in a comparable competitive position it was felt they should have the same powers.

And there was the general consideration, after considering these representations, that the mortgage experience has been good, and by reason of the fact that practically all mortgage portfolios now are repaid on a monthly amortization basis, the character of mortgage lending has changed consider-

ably from what it was many years ago, when the repayments were semi-annual or annual.

So, having all those things in mind, the Government considered it would not be too great a risk to permit the mortgage loans to go up to a 75 per cent limit. The industry, in making those representations, also pointed out that even with the power it would not necessarily mean that every mortgage they might make would be to the 75 per cent limit, but they felt the more room they had, the more selective they could be in assessing the risk, and that they would be able to go up to 75 per cent in good cases, but if they felt the risk did not justify it, they would not do so.

Senator HUGESSEN: May I ask a supplementary question on this point? I think it would be helpful if the Superintendent would give us the names of states where they have this 75 per cent limit.

Mr. HUMPHRYS: I know New York is one. They changed their law recently. New York is usually regarded as one of the leaders in insurance legislation.

Senator HUGESSEN: That is good enough, we have something to go on. Now you said that British companies also can lend up to 75 per cent.

Mr. HUMPHRYS: They have no limit in their legislation. So far as their business in Canada is concerned, they are required by the law to maintain assets in trust in Canada to cover Canadian liabilities, and in that trust there cannot be mortgages of a different type from those that Canadian companies could invest in. They would be limited now to mortgages for not more than two-thirds the value of the real estate, but they can, for their own account, if they wish to, make a higher mortgage loan and not put it in the trust. They are thus in a position to pick off those loans they think are desirable.

Senator HAYDEN: What do you mean? You say "for their own account"—they would still have some liabilities here?

Mr. HUMPHRYS: They would have to cover Canadian liabilities with trust assets of the character defined. But if they wish to bring more funds into Canada they can do so. And if they make a 75 per cent loan, and when it is paid down to two-thirds they can vest it in trust then.

Senator THORVALDSON: What is the practice of American companies in this regard? Would they bring assets from the United States to their Canadian portfolio to fill up this gap?

Mr. HUMPHRYS: Many United States companies have invested in Canada much more than their liabilities here. They are making investments here for their own account. Generally speaking, so far as their Canadian liabilities are concerned the funds to cover these liabilities would flow from the premiums collected and interest earned in Canada.

Senator HAYDEN: Going on to the question of expansion of investment in common shares, were there representations made on which you based the provisions in this bill under which the percentage of investment in common shares is increased?

Mr. HUMPHRYS: The initial point for that provision was the reference in the budget speech of the Minister of Finance at the start of the current session where he indicated the Government's intention to expand the investment powers of insurance companies as regards common stocks.

Senator HAYDEN: I was asking whether behind that, as in the case of the increase of percentage in mortgage loans, some representations were made, or some examination was made, or how do you justify such expansion?

Mr. HUMPHRYS: There were no representations made by the industry recently requesting any such change.

Senator HAYDEN: This was an internal assessment expressed in a policy statement by the Minister of Finance?

Mr. HUMPHRYS: I would say that would be correct.

The ACTING CHAIRMAN: But they might not be prepared to go to the percentage established in law. They could limit themselves to what they wanted?

Senator HAYDEN: I understand that if you examine the portfolios of insurance companies they have not approached even closely to the limit you have now set.

Mr. HUMPHRYS: That is correct on the average. On the average the proportion of assets invested in common shares is much lower than the present limit. However, this is something that varies from one company to another, and some companies are fairly close to the present limit on a market basis but not on a book basis.

Senator HAYDEN: You have also expanded the right of life insurance companies to invest and set up subsidiary companies in real estate terms—?

Mr. HUMPHRYS: Yes, the bill grants power to life insurance companies to own real estate subsidiaries.

Senator HAYDEN: This is something that is really new. It is on page 15, section 6 of the bill which enacts a new section 64A. I think I addressed some questions to you some time ago to ascertain what is meant by the words "subject to such terms and conditions as may be prescribed by the Treasury Board upon the report of the Superintendent." That is with respect to the right you give to life insurance companies to invest in several types of things in respect of which heretofore they did not have that power. Have you settled on all the terms and conditions to apply or would you care to make some comment on that section?

Mr. HUMPHRYS: The department has not settled on terms and conditions that it is in a position to put forward to the Treasury Board. We are now in the process of discussing this question with a committee representing the life insurance companies with a view to settling upon some terms and conditions that might be prescribed by the Treasury Board, initially at least. The nature of the terms and conditions under consideration I might explain by a few examples—we are concerned with the question of the valuation of the shares of the subsidiary in the balance sheet of the parent. This is a very important question, and one that requires careful attention in this whole field of insurance companies, trust companies and loan companies who are considering moving into the subsidiary field.

The discussion we have had with the insurance industry to date suggest it would be an appropriate valuation basis to regard the shares of the subsidiary as having a value determined on the basis of the net shareholders' equity in the subsidiary. This is, I think, an important principle because it would be, I think, dangerous to be in a position where if you had a particular group of assets that if they were owned directly by the life insurance company would have a certain value, and then to take the view that by interposing a subsidiary between, they could be carried at a different value. This principle is recognized in other legislation.

In our own case we have not hitherto had to deal with it because we have had no subsidiaries in the life insurance field, in the trust field, except for the two exceptions—that is in the life insurance field or the loan company field (except for the two exceptions) and all through the classes of company that are dealt with by this supervisory type of legislation, subsidiaries have been virtually nonexistent. In the United States this problem is perhaps more common than here, but it is dealt with in their legislation—for example in New York, the New York law says if an insurance company owns shares of another insurance company, they cannot be valued at a value which exceeds the proportion of the shareholders' equity in the subsidiary.

Senator HAYDEN: The net equity value.

Mr. HUMPHRYS: The rules for valuation adopted by the National Association of Insurance Commissioners in the United States are similar. The rules say that if an insurance company owns a subsidiary, the shares can only be valued on the basis of such of the assets of the subsidiary as would be eligible investments for the parent.

Senator HAYDEN: One of the problems you face here is if you have a Canadian life insurance company investing in a subsidiary life insurance company in the United States, for instance, and owning that subsidiary 100 per cent. You have no place to which you can go in order to get a market value?

Mr. HUMPHRYS: That is correct, sir.

Senator HAYDEN: Therefore, you require either a statutory formula to prescribe the value in those circumstances, or you need what you have in here, terms and conditions under which you may do this?

Mr. HUMPHRYS: Yes.

Senator HAYDEN: And I take it that in those terms and conditions you will prescribe the basis on which those shares of the subsidiary not having a market value will be valued for accounting purposes?

Mr. HUMPHRYS: This will be one of the things, yes. Another problem is whether the subsidiary could in turn have other subsidiaries. Another matter to be dealt with would be the investment powers of the subsidiary, because it would not be sound to have a situation develop where a life insurance company would be prohibited from getting into other lines of business, but it could by owning the subsidiary branch go into other fields of activity.

Senator HAYDEN: This is quite an expansion of the investment field for life companies?

Mr. HUMPHRYS: It is a very big move, yes.

Senator HAYDEN: Therefore, since you are breaking new ground the importance of the terms and conditions would be very significant?

Mr. HUMPHRYS: One of the reasons for proposing that the terms and conditions be determined by the Treasury Board is because of the very fact that new ground is being broken, and at least until some experience is gained in it it would be rather difficult to prescribe terms and conditions in such a form that they should be enacted in legislation.

Senator PEARSON: Where did the pressure come from for the bringing forth of this legislation?

Mr. HUMPHRYS: From the life insurance industry. They are much interested in the real estate investment field at the present time. They find themselves in the position of putting up most of the funds by way of mortgage money, but someone else is owning the equity. In times of rising real estate values, at least, the owners of the equity are getting the benefit.

The ACTING CHAIRMAN: They want to protect themselves against inflation.

Mr. HUMPHRYS: I think they see favourable investment opportunities in having an equity participation in real estate properties, and they are seeking permission to go into that field.

Senator HAYDEN: Mr. Humphrys, I was wondering if you could indicate what you feel would be an example, or several examples, of the sort of thing that would be done under subsection (c) of this new section, which gives the life company the power to invest its funds in the fully paid-up shares of any corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds?

Mr. HUMPHRYS: As I understand it, Senator Hayden, it has been put forward to the department by the industry that they are interested in having an equity participation in a company that might, say, assemble land for the purpose of constructing shopping centres, for instance, and apartment developments. The subsidiary company might also handle the design and the development of the whole construction project. There are examples, I think, of where real estate development companies engage in quite a broad range of activities in connection with land assembly and construction projects.

Senator HAYDEN: What would happen if in addition to making this investment in the shares of such a company it then became the mortgage in respect of those properties? Is that something that you feel must be covered in the terms and conditions?

Mr. HUMPHRYS: This is a question that we are actively discussing now, and it poses a number of difficult problems because the legislation proposes a 10 per cent limit on the investment of a company in real estate for the production of income, so that it would seem to me that the terms and conditions governing investments in a real estate company under section 64A should be such that a company's investment or involvement in real estate property under this head would be at least consistent with the concept of having a limit on the investment in real estate.

Senator THORVALDSON: Mr. Humphrys, at this point in regard to real estate you referred to the section giving the a life insurance company the right the invest in equities of a real estate company. I do not believe there is anything in that section as it now stands, unless it is modified by regulation, to prevent an insurance company from incorporating its own real estate subsidiary. That is right, is it not—or is it proposed to modify that section in that regard?

Mr. HUMPHRYS: No, senator, it was contemplated that companies would be able to incorporate a subsidiary.

Senator THORVALDSON: And by the same token, then, under section 64A I suppose it is contemplated that a Canadian life insurance company could incorporate a United States subsidiary?

Mr. HUMPHRYS: Yes.

Senator THORVALDSON: Or any foreign subsidiary of itself?

Mr. HUMPHRYS: That is the intention, senator, yes.

Senator HAYDEN: This may be a very important expansion of the investment powers of a life company?

Mr. HUMPHRYS: It may indeed, sir.

Senator HUGESSEN: It puts quite a responsibility on the Superintendent as well.

Mr. HUMPHRYS: It raises a variety of problems we have not had to deal with in the past by reason of companies not being able to own them.

Senator THORVALDSON: You will not be able to supervise an American company—that is, a wholly-owned subsidiary life company. You would not be able to supervise that. In other words, the supervision of that company would be by the state laws of the state in which it is incorporated.

Senator HAYDEN: Yes, but, senator, they would have their hands on the subject here in Canada—the parent—and I am sure they could in that fashion exercise all the authority they might feel they needed in order to have certain things happen in relation to the conduct of the subsidiary. Is not that right, Mr. Humphrys?

Mr. HUMPHRYS: Amongst the terms and conditions that we have been exploring have been some that would at least give the insurance department access to the statements and records of the subsidiary so that we could ascer-

tain what the subsidiary is doing. This might have to be done through the parent as we would not have direct jurisdiction over the foreign company. There would also probably be terms and conditions having to do with the powers of a subsidiary that can be applied if the subsidiary begins to exercise powers that are far beyond what it was thought a Canadian life insurance company should do, directly or indirectly.

Senator THORVALDSON: What I am wondering, Mr. Humphrys, is whether you have the power in the insurance department today to do that.

Mr. HUMPHRYS: I think one could always fall back on the ultimate power, and require the company to dispose of the shares of the subsidiary.

Senator THORVALDSON: Have you that power?

Mr. HUMPHRYS: I think it would be within the scope of this amendment to have the Treasury Board lay that down as one of the conditions.

Senator THORVALDSON: That is really what I was pointing to in my original question. I was asking whether there would be power to affect the operation of section 64A by regulation and by the Treasury Board.

Mr. HUMPHRYS: At the present we think it could be controlled by giving, amongst the terms and conditions, authority to the Treasury Board to disallow the shares of the subsidiary as an asset on the books of the parent in certain circumstances, or even to go further and require the parent to dispose of the shares. I think this would be within the scope of this amendment, and would be a very powerful tool.

Senator HAYDEN: Does not that second statement flow from the first; that is, if you disallow the assets for the accounting purposes of the company on which is based their right to continue in business, then the next step is disposal?

Mr. HUMPHRYS: It would not necessarily follow, senator. You might have a condition where you are concerned solely about the value of the shares. For example, if the subsidiary is investing in types of shares that you would not consider eligible for an insurance company, it might be sufficient in those circumstances merely to disallow the shares as an asset on the balance sheet. But, you might have more serious circumstances. The subsidiary might buy shares of the parent, or shares of other life insurance companies, and you might in those circumstances say: "You must sever connection because of the control that would flow if you carried the shares as an asset."

Senator HAYDEN: That is where they are ineligible assets?

Mr. HUMPHRYS: Yes.

Senator WALKER: You are very clear in your statements and I presume that "subject to such terms and conditions as may be prescribed" is necessary at the present time because you have not had the experience of determining yet what the terms and conditions might be and you have to get some experience before you go any further?

Mr. HUMPHRYS: That is correct. We are working with the industry to design some terms and conditions which would be safe initially and then both the industry and the department will examine actual cases as they come along and if necessary the terms and conditions can be modified accordingly. Eventually, it might be possible to write them into the legislation.

Senator WALKER: Based on your experience.

Senator HAYDEN: Moving to another point, on the basket clause, you are increasing that from 5 per cent to 7 per cent?

Mr. HUMPHRYS: Yes.

Senator HAYDEN: You will retain what I call a quantitative provision, that is, the percentage limitations, within that 7 per cent, that you can invest in various types of assets. Is that right?

Mr. HUMPHRYS: There is only really one quantitative limitation within that, and that is the limit on single parcels of real estate. A piece of real estate in which a company invests, pursuant to the basket power, cannot exceed 1 per cent of the company's assets—or, rather, I should say a company's investment in it cannot exceed 1 per cent. It might join as a partner with other companies in a bigger project.

Senator HAYDEN: There will be a correlation between that limit and the basket clause in relation to real estate and the present section we have been talking about, the new 64A.

Mr. HUMPHRYS: We are examining that question. We believe that terms and conditions under section 64A should at least be consistent with the principles already in the bill limiting direct investment in real estate and limiting the extent of the investment in any single parcel.

Senator HAYDEN: Do you think the limitation on real estate, which you say is the only one affecting the authority under the basket clause to invest, that that is necessary?

Mr. HUMPHRYS: This bill proposes to double it. Under the present limitation it is half of one per cent. The bill proposes to double it.

Senator HAYDEN: So we are moving up. We move away from the limitation there.

Mr. HUMPHRYS: It is doubling the limit.

Senator HUGESSEN: Is this increase in the basket also asked by the insurance industry itself?

Mr. HUMPHRYS: Yes.

Senator HUGESSEN: Are they generally up to 5 per cent now?

Mr. HUMPHRYS: No.

Senator WALKER: None of them are?

Mr. HUMPHRYS: No. I would also say that the increase in the size of the basket stems from the policy decision of the Government to attempt to broaden the field of investment in common shares. So there are two things being done. One, the specific dividend tests and earning tests are being relaxed. Also, the size of the basket is being increased. Both of these changes will broaden the area of investment in common shares.

Senator HUGESSEN: You have had no trouble in the past with the old basket, have you?

Mr. HUMPHRYS: No. It has worked exceedingly well.

Senator LANG: Mr. Humphrys, notwithstanding the fact that the companies have not utilized the potential within the basket as to investment in common shares, in your opinion would this change in the legislation encourage those companies to enlarge their activities in the basket; and, as far as investment in common shares is concerned, would it have an effect on the policy of those companies?

Mr. HUMPHRYS: I believe it would, Senator Lang. I do not believe that all the companies will go up to the new limits, or nearly so.

I believe that each company must determine its investment policy in the light of its own resources and its surplus margins. I believe that the changes may well have the result, over a period, of a growing proportion of assets placed in—invested in—shares.

There is not only the broadening of the eligibility provisions but there is also the change proposed in the valuation requirements which will enable life insurance companies to spread the impact of a drop in market values over a three-year period, rather than taking the full impact in the year in which the drop occurs. This will serve, to some extent, I believe, to remove what has

been put forward as an impediment to investment in common shares, namely, the fear of sharp fluctuations in the market with resulting sharp influences on surplus position.

Senator WALKER: It is a matter of Government policy that this field should be extended?

Senator WHITE: Is there any restriction as to the income investment made by Canadians?

Mr. HUMPHRYS: For Canadian companies there is no restriction at the present time. Looking at all Canadian companies—these are the figures for 1963—about 4 per cent of their assets is invested in common shares and about one-third of that is in Canadian common shares.

Senator WHITE: Do you have any control over the common stock they purchase?

Mr. HUMPHRYS: In the department we examine, as a regular routine, all the new purchases of stocks and other investments made by companies under our jurisdiction, to see to it that the purchases comply with the requirements of the law.

Senator THORVALDSON: When you speak of the law you mean that is covered by regulations?

Mr. HUMPHRYS: No, it is in the statute itself.

Senator WHITE: Do you mean they do not go to 15 per cent?

Mr. HUMPHRYS: We look at the investment to see to it that it qualifies within the specific provisions contained in the law and we also check to see that they live within the quantitative limits.

Senator HAYDEN: Arising out of what Senator White said, limitation in common shares is limited to companies incorporated in Canada, or to chartered banks?

Mr. HUMPHRYS: Not for Canadian companies. There is no geographical limit.

Senator THORVALDSON: Is there a limitation to the number of years that a company can take dividend on that particular stock? In other words, do you supervise whether life insurance companies invest in what we might call speculative stock?

Mr. HUMPHRYS: We examine all the new investments. If it is an investment in common shares, we ascertain whether the share has a dividend record that would make it eligible under the specific provisions of the act. If it does not, then the investment has to be made under the authority of the basket provision. Then we check to see to it that the company has not exceeded the limit prescribed in the basket provision.

Senator BURCHILL: This legislation only covers life insurance companies under federal charters?

Mr. HUMPHRYS: It applies to life insurance companies and other types of insurance companies incorporated by Parliament. We have four provincial companies registered under this act, who have voluntarily made themselves subject to it. Those four companies were registered many years ago and have continued under the statute for many years.

Senator BURCHILL: What proportion of business is done by Canadian companies operating in Canada?

The ACTING CHAIRMAN: In life insurance.

Mr. HUMPHRYS: In the life insurance field, companies registered with the department—Canadian companies—do 65 per cent of the life insurance in Canada. Non-resident companies, that is, British and foreign life insurance

companies registered with the department, do a further 29 per cent. So, 94 per cent of the life insurance business in Canada is transacted by companies under the jurisdiction of the federal Insurance Department. The remaining 5.7 per cent is transacted by provincial companies that are not under the jurisdiction of the federal department.

Senator THORVALDSON: Would a similar answer apply in regard to provincially incorporated trust companies? There are some provincially incorporated trust companies that are under your jurisdiction; I know you examine them and so on. Does this bill apply to those companies?

Mr. HUMPHRYS: This bill does not apply to provincially incorporated trust companies that are supervised by the federal Insurance Department. It applies only to federally incorporated trust companies. Federally incorporated trust companies do about one-third of the total business done by trust companies in Canada.

Senator HAYDEN: What about loan companies?

Mr. HUMPHRYS: Loan companies under the federal Loan Companies Act do about two-thirds of the total loan company business in Canada.

The committee adjourned.

Upon resuming at 2 p.m.

The ACTING CHAIRMAN: Honourable senators, may we commence now? I wish first to tell the members of the Senate, who were not able to be present at the committee meeting this morning, that Mr. Humphrys has given a statement, and some clarification has been made about the reason for the life insurance companies being able to lend up to 75 per cent on property, the same applying to the trust companies. The increase from 5 per cent to 7 per cent in the basket clause, and other matters to a certain extent were clarified this morning.

If Senator McCutcheon, or any other member, would like to put some further questions to Mr. Humphrys, now is a good time to do so.

Senator MCCUTCHEON: Mr. Chairman, I have some questions I would like to direct to Mr. Humphrys, and I do not want to direct questions as to policy. All I want are factual observations. I take it, Mr. Chairman, that before we are through the minister will come before us and talk about policy?

The ACTING CHAIRMAN: If that is the wish of the committee and it is necessary, we will call Mr. Gordon. If it is not necessary I would like to avoid having him come here, if possible. It all depends upon the requests you want to make, or whether it will be necessary to hear Mr. Gordon himself.

Senator MCCUTCHEON: I appreciate the fact that the minister is busy, and I may change my mind, but it seems to me at the moment that there are some questions I would like to direct to him which might be improper to direct to the Superintendent.

Mr. Chairman, this touches immediately on this matter, I am referring to the general restrictions that are imposed under this bill, if it is passed, on the ownership of shares in life insurance companies, mortgage companies and loan companies subject to federal jurisdiction. So I am not going to discuss with the Superintendent the reason for those provisions. However, what I would like to obtain from him is some information as to the area of each of these industries which is actually covered by these provisions.

I will deal with the life insurance industry first. I suggest to the Superintendent that there are only four substantial life insurance companies to whom these provisions as to share ownership by foreigners apply; is that correct?

Mr. HUMPHRYS: There are 12 life insurance companies altogether to which the provisions would apply at the present time, and altogether those 12 com-

panies do about 25 per cent of the life insurance in Canada, but there are three quite large ones—there are four quite large ones, I would say.

Senator McCUTCHEON: So that when you say they do 25 per cent of the life insurance business in Canada, are you referring to companies that are registered with the Superintendent of Insurance?

Mr. HUMPHRYS: The companies registered with the department do about 95 per cent of the business in Canada.

Senator McCUTCHEON: These restrictions, of course, do not apply to any foreign companies?

Mr. HUMPHRYS: No.

Senator McCUTCHEON: They do not apply to Metropolitan Life, Prudential Life?

Mr. HUMPHRYS: Well, they are mutual companies.

Senator McCUTCHEON: Where would you say Sun Life was controlled presently, Mr. Humphrys?

Mr. HUMPHRYS: The voting power of the company is in the hands of the participating policyholders, so each policyholder has a vote, either in person or by proxy. I do not think it would be possible to say that it is controlled in any one place. I do not think any one shareholder or combined group of shareholders are in a position to direct the activities and the fortunes of the company.

Senator McCUTCHEON: So there are no shareholders, but policyholders?

Mr. HUMPHRYS: Policyholders I should say. So in the normal use of the term «control», I do not think it is possible to say it is controlled in any one place.

Senator McCUTCHEON: I realize the difficulties of assembling votes, and so on, but would you accept my suggestion that the majority of the votes are outside Canada?

Mr. HUMPHRYS: I think likely that is the case, that there are more participating policyholders outside Canada than inside Canada.

Senator McCUTCHEON: And you are not suggesting that Sun Life is restricted to participating policyholders outside Canada?

Mr. HUMPHRYS: No.

Senator McCUTCHEON: Now could we turn to the trust companies, and I am going to mention some names. Royal Trust Company is reputedly the largest trust company in Canada. The provisions of the bill are not applicable to it?

Mr. HUMPHRYS: No.

Senator McCUTCHEON: Montreal Trust Company is reputed to be second largest. The provisions of the bill are not applicable to it?

Mr. HUMPHRYS: No.

Senator McCUTCHEON: To what proportion of the trust companies in Canada will these share restrictions apply? I am not talking about investment, or anything else, but merely about the restriction on shareholdings.

Mr. HUMPHRYS: The trust companies to which these provisions would apply do about one-third of the trust business in Canada.

Senator McCUTCHEON: Do they do that much?

Mr. HUMPHRYS: Yes.

Senator McCUTCHEON: Well, I am surprised. I am completely unfamiliar with the loan business, so would you volunteer the information, rather than my asking you for it?

Mr. HUMPHRYS: The loan companies, subject to this legislation, do about two-thirds of the business done by loan companies in Canada.

Senator McCUTCHEON: So the greatest impact will be in the field of the loan companies?

Mr. HUMPHRYS: Proportionately, yes. The federally incorporated—

Senator HAYDEN: Percentages are dangerous, in one sense. The two-thirds in the loan companies in dollar volume may not have the same relationship to 25 per cent in the life insurance companies, or a third in the trust companies.

Senator McCUTCHEON: I appreciate that. I am trying to find out what area in each field we are dealing with.

Mr. HUMPHRYS: The federal loan companies at the end of 1963 had assets of \$775 million and the provincial companies in that field had assets of \$337 million. The federally incorporated trust companies had assets of \$799 million, exclusive of the estates under administration, whereas the provincial companies had corresponding assets of about \$1,300,000,000.

Senator McCUTCHEON: Can you give figures of others?

Mr. HUMPHRYS: I do have the figures on other assets, and business in force. The figures I gave you of business in force were about 25 per cent or 26 per cent.

Senator McCUTCHEON: Turning to the life insurance business for a moment, Mr. Humphrys, what company has the largest amount of life insurance in force in Canada?

Mr. HUMPHRYS: I think it is the Metropolitan, senator. I believe the London Life is quite close.

Senator McCUTCHEON: That is what I thought, the Metropolitan is just a little bit ahead of the London.

I would like to ask you one more question, as to the business that the Metropolitan Life does in Canada. I am sorry I did not bring the advertisement with me, but they advertise that more Canadians are insured with Metropolitan Life than with any other company, and being in the life insurance business I believe that to be the fact. Have you not absolute control, if you want to exercise it, over the investments the Metropolitan Life must maintain in Canada to back up its Canadian liabilities?

Mr. HUMPHRYS: I would not say we had absolute control, senator. They must maintain assets in Canada to cover their liabilities, and the assets eligible for that purpose are as described in the relevant provisions of the Insurance Act, but within that they may vary.

Senator McCUTCHEON: Within the eligible assets they may vary, but let me put it to you this way. This bill, after all, is dealing with the assets, with the type or class of investments that various companies subject to federal jurisdiction may make. It deals with them in two ways: it deals with them qualitatively and quantitatively. If you accept my suggestion, in so far as federally incorporated or foreign incorporated companies that are subject to federal jurisdiction in the life insurance field, in the mortgage field and the loan company field are concerned, that if the federal Government wished to exercise the jurisdiction it could require them all to invest all their funds in 20-year Dominion of Canada 5 per cent bonds—

Mr. HUMPHRYS: I believe that would be within their legislative competence, yes.

Senator HAYDEN: Wait a minute. The foreign based companies could maintain for their own account any portfolio of investments they wished. You only control investments and limit them to eligible investments to the extent they have to provide assets against liabilities. Beyond that—

Senator McCUTCHEON: Beyond that, the British and foreign companies have complete freedom. I am sorry if I did not make myself clear.

So, let me put it this way, notwithstanding what the share ownership might be or the policy holder ownership might be, do you agree that with respect to the Canadian liabilities of foreign companies and with respect to all the assets of Canadian companies subject to federal jurisdiction, the federal Government or Parliament—that is a better way of putting it—has absolute control as to the type of assets in which they may invest their funds, both quantitatively and qualitatively?

Mr. HUMPHRYS: I believe they could control them through legislation, yes.

Senator McCUTCHEON: Thank you very much.

I am sorry, Mr. Chairman, I had to leave this morning, so I do not know how you want to proceed. I have some remarks I want to make.

The ACTING CHAIRMAN: Well, we have not lost the opportunity of your good questions anyway.

Senator McCUTCHEON: Then I would like to just turn to clause 5—and I will probably get myself lost because clause 5 goes on for pages, so I will say page 14 of the bill. And if I am touching on policy now I am sure you will understand it is unintentionally and you will reprove me, and then we can discuss it with the minister.

Section 4(a) of whatever subsection it may be, starting at the top of page 14, is the so-called basket clause, and the effect of the amendment, as I understand it, is to increase the so-called basket from 5 per cent to 7 per cent of the total assets of the company.

The Acting CHAIRMAN: That is subsection 4(c).

Senator McCUTCHEON: Yes, subsection 4(c).

Mr. HUMPHRYS: There are some other amendments in the section also.

The Acting CHAIRMAN: But that is the one that deals with the basket clause.

Mr. HUMPHRYS: Yes, but within the basket clause—

Senator McCUTCHEON: Well, what are the other amendments?

M. HUMPHRYS: The size of the basket is raised from 5 to 7 per cent of the company's assets. The size of the individual parcel of real estate that may be purchased, pursuant to the basket provision, is increased from half of one per cent of the company's assets to 1 per cent.

The range of partners with which a company may join in making real estate investments, pursuant to the basket provision, is expanded somewhat.

Senator McCUTCHEON: I want to ask you this one question. As I understand it, when the basket clause was first introduced in the act—and you will know better than I do, I forgot just when that was done—it was with a view to enabling the life insurance companies to make a type of investment which might not be an investment for widows and orphans, but which was a businessmen's investment, to enable businessmen to put their funds into a wider area and provide a certain amount of what might be called risk capital, and so on, for which they have been criticized and as to which I want to ask you some questions in a moment.

Would you like to offer suggestions as to why the basket should not be a complete basket, why the section should not be worded that:

A company may make investments or loans not hereinbefore authorized by this section, including investments in real estate or leaseholds, provided that the total book value of the investments and loans made under this section and held by the company shall not exceed seven per cent of the book value of the total assets.

That would make a much shorter section.

Mr. HUMPHRYS: When the basket was first introduced, which was, I believe, in 1948 or 1950—

Senator DAVIES: Would you speak a little louder, please?

Mr. HUMPHRYS: I am sorry. When the basket was first introduced—I believe it was in 1948 or thereabouts—the philosophy behind it was that in attempting to describe a series of categories of investment it was necessary to lay down prescriptions attempting to describe the security or to establish some standard of quality. Inevitably new types of investment come along, good investments that do not meet all the particular points that you have attempted to lay down in the legislation, so by giving a margin free from those qualifications companies are enabled to invest in new types of investment or in other good investments that did not meet the technical qualifications. It was not intended that the basket would be used for poor quality investments. It was rather an attempt to make a workable investment pattern without having to keep modifying in small ways the technical requirements. It proved to be very successful, companies used it, never, I think, up to the full amount, but they did use it and it has served a better purpose than one would think by merely looking at the volume of assets in the basket at any one time a company can buy a common stock that may have only a four-year dividend record—

Senator McCUTCHEON: Or no dividend record at all.

Mr. HUMPHRYS: —and when it gets the seven-year dividend record they can transfer it out, so that they can move securities through the basket. It has proved to be a very useful tool, and has greatly increased the flexibility of the investment provisions. As a consequence the limit in the basket has been increased on a number of occasions and is now proposed to go to 7 per cent.

Senator McCUTCHEON: I am in agreement that it should.

Mr. HUMPHRYS: The two special provisions here deal with real estate and mortgages.

Senator McCUTCHEON: And with the amount of stock of any class in any company.

Mr. HUMPHRYS: Not specifically, but that 30 per cent limit rides through. Taking the question of real estate first, the power was given to life insurance companies or to insurance companies generally to invest in real estate only relatively recently. The first provision was limited quite severely, and the real estate had to be leased to a corporation that had a satisfactory dividend record, and it was hedged around with many restrictions. Power was given in the basket to buy other types of real estate which would produce an income, but it was thought a company should not become involved in any one parcel of real estate beyond some reasonable proportion of its assets. Having in mind the real estate to be purchased, the basket type was not necessarily as good as was the other type of real estate. It was thought the involvement of the company in any one individual parcel should be less. The legislation in the lease-back type of real estate set a maximum investment in any one parcel of one per cent, and when the basket came along a limit of one-half of one per cent was put in. In the new provision it is proposed to limit it to one percent. It was thought a company should not get too deeply into one parcel of real estate whether of the basket type or of the lease-back type.

Senator McCUTCHEON: I assume the 7 per cent is set having some relation to the capital generally and the surplus of life companies in this country, which does not differ very much from that figure, the theory being that if the basket disappeared entirely the policyholders would still be protected. Now, as I understand it, or as I understand this section, a company could go out and invest

30 per cent of its shares in Windfall, it could buy 30 per cent of the shares in a number of other companies we read about these days. Shares fluctuate on the market and it may be found that they are no good, and yet this would be perfectly legitimate.

What I am asking you—and it is probably the minister who should be asked—is why, when you give the companies all that freedom, do you hedge them about and say “Oh, but you must not buy in the 30 per cent shares of Noranda Mines”—not that there is any company in Canada that would be capable of doing that. Why do you say “If you have got \$100 million of assets, you must not put more than one per cent of that in any one parcel of real estate,” although there are many parcels of real estate in Metropolitan Toronto or, indeed, in Montreal which companies would be very happy to own if they could acquire. Why, if you have a basket, and from one point of view, as you know, if the directors are irresponsible 7 per cent of the assets can go down the drain overnight, why do you hedge them about now with quantitative restrictions because, there are not qualitative restrictions on the basket. The only qualitative restriction is regarding mortgages, but there are all kinds of quantitative restrictions.

Mr. HUMPHRYS: I don't believe the basket was put in with the thought that it would be solely for speculative investments. It was put in to meet the difficulty of dealing with the technicalities of new investments and new types of investments in a legislative program. By giving an area of freedom, I believe that Parliament considered that this was an area that the management of companies would use with good investment judgment and prudence, and I think it would be far from anyone's thought that we were contemplating or that anyone was considering that 3 per cent, or 5 per cent or 7 per cent of the company's assets would go down the drain. Experience has supported that. Actually the investments have been generally of good quality and successful types of investment. If I am speaking now of policy, I hope you will excuse me. I would suggest it is a vastly different matter to give an area of freedom of 5 per cent or 7 per cent within which a company or the management of a company may exercise its investment judgment, on the one hand, and on the other hand permission to concentrate 5 per cent or 7 per cent of the company's assets in one parcel of real estate that does not meet the qualitative provisions found in the act. It does not seem from that point of view to be inconsistent to have an inner limit in the basket over a particular type of investment that is relatively recent for insurance companies.

In consecutive amendments to the act, the approach has been to gradually expand the investment field as experience is gained.

Senator McCUTCHEON: What you are saying—and you have answered my next question—is that when the bill was introduced, it was implicit that the management and the board of directors of the life insurance company were reasonable, capable businessmen who were not going to squander the assets of the company. Now, do I take it from what you say that that assumption has been justified by your experience to date?

Mr. HUMPHRYS: Yes.

Senator McCUTCHEON: Then I come back to my question; I will put this last question on this subject and then I want to move on to something else. Having had that experience, and having put the basket in on that assumption, which I, being prejudiced, must consider was a reasonable assumption, why do you say to me “You can only invest one per cent of your assets in a particular parcel of real estate.” What is wrong with $1\frac{1}{4}$ per cent? What is wrong with $1\frac{1}{2}$? What is the magic about this? If I am a poor manager, I can lose all my assets through your basket—at least 7 per cent of them, perfectly legally. If I am a good manager I should be entitled to decide how much I am going to put in one parcel of real estate. I am only using one of the quantitative restrictions.

Mr. HUMPHRYS: I think the answer to your point probably involves the philosophy of having investment provisions in the statute at all.

Senator HAYDEN: Is there not a little more than that? In various parts of the act, in so far as investment in real estate is concerned overall, this bill allows a fairly substantial percentage of investment in real estate in various forms. I mean, you have mortgage loans and they are backed up by real estate, you have the leasehold provisions, and you have the basket provision. Is it the concept that overall there is a required percentage that should be devoted to that type or character of asset in relation to all the other things that an insurance company may invest in.

Senator McCUTCHEON: If I might interject, you can invest 100 per cent of your funds in mortgages.

Senator HAYDEN: Then the rest becomes unnecessary because you have no more money to invest.

Mr. HUMPHRYS: I think the purpose or intention behind having a pattern of investment provisions in the legislation is to attempt to create a general standard of quality for an investment portfolio, but within that there is a great deal of room for investment judgment on the part of management. I think that steadily over the years in successive amendments that area of judgment has been broadened a great deal.

Senator McCUTCHEON: I appreciate that.

Mr. HUMPHRYS: I think the pattern has been followed and it has been broadened step by step.

Senator McCUTCHEON: Then, I have two more questions...

The ACTING CHAIRMAN: As a matter of fact, they have doubled the possibility of investment in real estate and leaseholds.

Senator McCUTCHEON: That is quite correct, Mr. Chairman. I am merely saying that you must have confidence in the life insurance companies, because if you did not have confidence in them you would not put in this clause, and place them in a position where they can make an advantageous investment if the costs were only one per cent, but cannot do so if the cost is $1\frac{1}{2}$ per cent. However, I shall not pursue that any further.

There are only two more questions I want to touch on, Mr. Humphrys. Can you describe shortly the restrictions, if any, that are placed by their own countries on such companies as the Prudential of England? I am speaking of investment restrictions.

Mr. HUMPHRYS: I do not believe that the British companies have any legislative restriction on the investments they can make.

Senator McCUTCHEON: They have been fairly successful, in your observation?

Mr. HUMPHRYS: I would say so, yes.

Senator McCUTCHEON: I am thinking of the Standard of Edinburgh and the Prudential of England, and I could name some others. I have one other matter to inquire into. There has been considerable criticism of the life companies on the grounds that they have not exercised their right to invest up to 15 per cent of their assets in common stocks. The bill, of course, includes what I call the three year moving average for the evaluation of common stocks. It also permits them to invest in up to 25 per cent. The figures that are always quoted are book value figures, and we heard something about book values in this committee this morning. Can you tell us, based on market values, what proportion of the assets of Canadian life insurance companies subject to your jurisdiction are now invested in common stocks—that is, based on market values?

Mr. HUMPHRYS: I have not the figures, senator, for the end of 1964 although the statements were filed at the beginning of this month. But, at the end of 1963 the proportion was 7.71 per cent.

Senator McCUTCHEON: Based on market value?

Mr. HUMPHRYS: 7.28 per cent is the ratio of the market value of the common stock held to the market value of total assets.

Senator McCUTCHEON: Yes. Have you the book value figure?

Mr. HUMPHRYS: The book value ratio was 4.03 per cent.

Senator McCUTCHEON: So it is 75 per cent more based on market value than on book value.

Mr. HUMPHRYS: Yes.

Senator McCUTCHEON: Thank you very much.

The ACTING CHAIRMAN: Are there any other questions?

Mr. HUMPHRYS: I might say that within those figures there is quite a range from company to company. Those are the averages across the board.

Senator McCUTCHEON: I appreciate that. Are there any companies who based on market value have more than 15 per cent of their assets invested in common stocks today? Is there any such company?

Mr. HUMPHRYS: There was none at the end of 1963.

Senator McCUTCHEON: And I hazard a guess that at the end of 1964 there was.

Mr. HUMPHRYS: That is possible.

Senator GÉLINAS: Mr. Humphrys, does that basket clause give the Department of Insurance as much supervision as it has over the investment of insurance companies, or is there a freedom of action?

Mr. HUMPHRYS: There is a freedom of action, senator. The only supervision that the department places on it is to see to it that investments of that category do not exceed the limit in the basket.

Senator GÉLINAS: To what percentage has that basket clause been used up to now?

Mr. HUMPHRYS: At the end of 1963 again, 1.58 per cent of the assets of companies qualified under the basket.

The ACTING CHAIRMAN: Are there any other questions?

Senator McCUTCHEON: Mr. Chairman, I have been imposing on your good nature all day today...

The ACTING CHAIRMAN: That is all right. You can go ahead doing so.

Senator McCUTCHEON: —but I have some people waiting for me, and you suggested this morning that we are going to sit when the Senate rises this afternoon.

The ACTING CHAIRMAN: Yes.

Senator McCUTCHEON: I would like to have an opportunity of discussing the principle of the basket with the minister.

The ACTING CHAIRMAN: We will see whether he can come after the Senate rises; if he cannot then perhaps we can get him tomorrow morning.

Mr. HUMPHRYS: Just to save a letter from the London Life I might say that the figures Mr. Fox prepared show that the London Life has more business in force in Canada than the Metropolitan.

Senator McCUTCHEON: Then the Metropolitan's advertising must be misleading.

Senator CROLL: That was yesterday.

Mr. HUMPHRYS: This was at the end of 1963.

The ACTING CHAIRMAN: We still have 20 minutes before the Senate sits. We might begin our clause by clause study of the bill.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 1. This is the application of provisions to all companies.

Senator HAYDEN: Can you enumerate what those are?

Mr. HUMPHRYS: Certain provisions of the Insurance Act apply only to companies incorporated after 1910. The pre-1910 companies were subject to the old Companies Clauses Act, but certain provisions of the Insurance Act are made applicable to all companies regardless of the date of incorporation. This amendment is to make clear that the new provisions relating to non-resident ownership of shares will apply to all companies regardless of when they were incorporated.

The ACTING CHAIRMAN: It concerns the register of shares and the transfer of shares, some definitions, limitations on the ownership of shares, voting rights, transfer, special meetings, debts transmission, right to vote, reduction of capital, increase of capital, change of capital, and approval of by-laws. Those are the main amendments that will apply.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 2 concerns the qualifications of directors.

Mr. HUMPHRYS: There is a reduction from \$500 to \$250 for insurance companies. Formerly you had to have shares on which \$500 had been paid as capital. This would cut the qualification in half. The shares of some companies are selling at a very high price, and the old rule would require an investment in some companies, in order to qualify, of \$30,000 or more.

Senator HAYDEN: What is the provision with respect to a mutual company?

Mr. HUMPHRYS: There must be a policy for at least \$4,000 on which at least three years' premiums have been paid.

Senator HAYDEN: So unless a man is a good insurance risk he cannot become a director of a mutual company?

Mr. HUMPHRYS: He can take out an annuity.

Senator HAYDEN: That is more expensive.

The ACTING CHAIRMAN: Shall sub-clause 1 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Sub-clause 2?

Mr. HUMPHRYS: Subclause 2 of clause 2 refers to—the clause specifies that a shareholder will have one vote for each share, but there is a cross-reference put in there to refer to two places where that rule is modified. It is modified in connection with the non-resident restrictions, and it is modified in connection with the subdivision of the par value of shares in life companies. We will come to both of those matters later.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Clause 3 provides for the addition of sections 16B, 16C, 16D, 16E and 16F to the act, and those sections are concerned with the definitions of a corporation, a life company, a non-resident, a resident, associated shareholder, shares held jointly, limit on shares held by non-residents—

Senator HAYDEN: Mr. Chairman, if we could stop at that point for a moment, I would ask Mr. Humphrys to explain briefly how the non-resident requirement operates.

Mr. HUMPHRYS: This whole clause 3 sets forth the plan designed to limit the non-resident ownership of shares of life insurance companies. The plan is based on the provision in the statute that no transfer of shares is valid for any purpose whatever unless it is registered on the books of the company. So this plan is based on that and requires the directors to refuse to enter a transfer of shares in defined circumstances.

The defined circumstances are four. First, the directors must refuse a transfer if non-residents own more than 25 per cent of the shares and the transfer would increase the number of shares held by non-residents. So it is not restricting transfers between non-residents but restricting a transfer which would increase the non-residents' holding.

Secondly, the directors must refuse if the transfer is to a non-resident and would bring the non-resident holding above 25 per cent.

Thirdly, the directors must refuse if the transferee is a non-resident and already he owns more than 10 per cent.

Fourthly, they must refuse if the transferee is a non-resident and the transfer would bring his holding above 10 per cent.

The plan is to put a limit of 25 per cent on the proportion of shares which may be held by non-residents in total, and put a limit of 10 per cent on the proportion of shares that may be held by any one non-resident; and in the latter limitation the section looks not only at the non-resident himself but at other shareholders who are associated with him in the circumstances specified in the act.

Senator HAYDEN: How many of the life companies are there which would be subject to this?

Mr. HUMPHRYS: There are 12. There are 38 companies, life companies, under the jurisdiction of the federal Insurance Department, of which 13 are mutual, the other 25 being stock. Of the 25 stock, 13 are already under foreign control and 12 are under Canadian control. The 13 under foreign control do about 5 cent of the business in Canada, and they would be exempt from these provisions. The 12 companies that would be subject to these provisions would do about 25 per cent of the business.

Senator HAYDEN: That is an odd definition you have of "resident"—some person who is "not a non-resident".

Mr. HUMPHRYS: The plan is based on control over the entries in the share register, but there are two circumstances under which shares may become held by non-residents, without a transfer on the books of the company. One would be where a man owns shares and moves out of the country and becomes a non-resident. Another would be—and perhaps this would be more serious—where a corporation owns shares and control of that corporation is sold to a non-resident. Then that corporation becomes a non-resident.

In order to deal with those situations, the plan goes on to provide that if a non-resident, together with associated shareholders, holds more than 10 per cent shares, he may not vote at all. So that, even if a non-resident, by reason of buying control of a Canadian holding company, were to acquire control of more than 10 per cent of the shares, he would lose all his voting rights, not only on the excess over 10 per cent, but on all.

The ACTING CHAIRMAN: On the 10 per cent itself.

Mr. HUMPHRYS: This is necessary, because otherwise he could buy all the shares and, if he could vote 10 per cent and no one else could vote at all, he could control by 10 per cent.

Senator HAYDEN: Why could he not set up a Canadian holding company and put the shares in there—51 per cent?

Mr. HUMPHRYS: When the Canadian holding company is controlled by non-residents, it is non-resident by definition.

Senator HAYDEN: How far do you go in the matter of control? I might have two companies. I might have a Canadian company that owns the shares of the life company; I might have a Canadian company that owns the shares of a company that owns the shares of the life company.

Mr. HUMPHRYS: If it is controlled directly or indirectly by non-residents, it is non-resident.

Senator CROLL: I understood you to speak about non-residents. At certain times he cannot transfer the shares because there are more than 25 per cent. On the other hand, they may go down to 20 per cent at some future time. Who gets the first opportunity to transfer—one who has applied and been refused?

Mr. HUMPHRYS: Each application for transfer would be dealt with in accordance with the circumstances when it is presented.

Senator CROLL: Suppose I apply today and I am told "We are sorry, we cannot transfer, you do not come within this." Two weeks from today, Senator Hayden applies and it is found at that time it is possible.

Mr. HUMPHRYS: This plan does not set up any order of priority. I think whoever is there when the door is open gets in.

Senator CROLL: Who tells whom that the door is open?

Senator HAYDEN: You find out by applying.

The ACTING CHAIRMAN: Would not that be dealt with by the by-laws which would be made by the company?

Mr. HUMPHRYS: The company could make by-laws.

The ACTING CHAIRMAN: I think the company could make by-laws which would settle that.

Mr. HUMPHRYS: If you were a non-resident you could of course buy the shares and put them in the name of a Canadian nominee to hold for you. He could not vote them, but you could make your amendment, if you wished.

Senator CROLL: That I can quite easily understand. One can tumble to that. On the other hand, not only do you have to buy the shares but you have to know the right people at the same time. That is sometimes hard for a non-resident.

The ACTING CHAIRMAN: I think that could be settled by the by-laws which could be established by the company.

Senator CROLL: A priority—

Senator HAYDEN: You could have at the estate transfer office a book on priorities, something wherein it is entered and there is your record.

The ACTING CHAIRMAN: One thing that bothers me at the moment is the definition of ordinary resident. What does it mean exactly? Does it mean six months' resident, nine months' resident, or what does it mean?

Mr. HUMPHRYS: No specific definition has been attempted. It was thought that inevitably in these matters there is going to be some area of discretion of judgment. The question was really where should the discretion rest. This leaves the discretion with the directors, with the thought that it is not too difficult in the great majority of cases, to determine where a man's ordinary residence is. If there are borderline cases, where one board of directors might say he is ordinarily resident in Canada and another board might say he is not, it is likely that, if that is the case, it is likely that he is sufficiently resident in Canada to make it of little importance whether he gets the shares or not. So I do not think there would be many cases where it would be difficult to decide.

You have to keep in mind, in considering this whole plan, that it is not like a taxing statute where, if you meet the qualification there is a lot of money for you by lower taxes or a big refund. There is no great prize for finding your way through a loophole: it is only a question of whether you can buy a certain type of share or not; and even though shares of Canadian life insurance companies might look like good investments to some non-residents, they are not all that good that there is a great bonus for working your way through a rather complex tangle.

Senator HAYDEN: If a non-resident bought some shares of a life insurance company and if his address were a Canadian address and nothing more on the register, the directors could certainly assume that such a person with such a Canadian address is ordinarily resident in Canada.

Mr. HUMPHRYS: There is a provision here that enables the directors to get declarations from any transferee and to act on that declaration or on their own knowledge of the circumstances, and they are not liable in any action.

Senator HAYDEN: It is like the declaration that is required now under the United States Interest Equalization Act.

Mr. HUMPHRYS: The company may by its by-laws determine what type of declaration they are going to request from a shareholder or from a proposed transferee, and this gives them full authority to rely on the information set down in that declaration.

Senator CROLL: Or reject.

Mr. HUMPHRYS: Or to act on their own knowledge of the circumstances if they wish, but if they act on the basis of the declaration they are fully protected. It is up to the insurance company to have a declaration designed in such a way that they can determine whether a transferee is a resident or non-resident.

Senator HAYDEN: If they just read the declaration and they do not look around at all, they would be perfectly within the statute?

Mr. HUMPHRYS: That is correct.

Senator HAYDEN: If they get curious or make inquiries, and if then they acted on the declaration, they might have trouble later on.

Mr. HUMPHRYS: If they knowingly permit a transfer which is prohibited by the statute, they could be liable to penalty.

Senator HAYDEN: No, I mean if they do nothing but get the declaration they are perfectly safe within the law?

Mr. HUMPHRYS: I would say so.

Senator HAYDEN: No matter what rumours there may be, they do not have to investigate them so long as they have a declaration?

Mr. HUMPHRYS: I suppose that would be according to the conscience of the director.

The ACTING CHAIRMAN: Shall we pass section 3, which includes 16B and also C, D, E and F?

Mr. HUMPHRYS: I should mention that 16F, the final section, preserves existing rights, so that if any non-resident now has more than 10 per cent his rights are preserved as long as he does not increase his holdings.

Senator CROLL: Is that troublesome in any way?

Mr. HUMPHRYS: I just make the point to make clear that this is not taking away rights anyone had.

Senator CROLL: I get your point.

Senator HAYDEN: If non-resident holdings are over 25 per cent at the time this measure comes in force, all it does is to bar transfer until the non-resident holdings get down below 25 per cent?

Mr. HUMPHRYS: That is correct.

The Acting CHAIRMAN: Shall section 3 carry?

Hon. SENATORS: Carried.

The committee adjourned.

Upon resuming at 4.45 p.m.

The Acting CHAIRMAN: Gentlemen, we have a quorum. On Bill C-123 we have gone through the first three clauses. We are at clause 4, on page 8, which is the permission to change the capital structure of the company and to have a division that might be on a \$1 a share basis.

Mr. HUMPHRYS: Honourable senators, clause 4 has two subclauses. The first permits insurance companies to subdivide the par value of their shares below the present minimum of \$10 down to a minimum of \$1. But it goes on to provide, in the case of a life insurance company, that if they subdivide the par value of their shares below \$5 each, then a shareholder will have only the number of votes that equals the product obtained by dividing the total par value of all his shares in the capital stock of the company by five.

The purpose of that qualification for life insurance companies is to preserve a reasonable balance of voting power between the participating policy holders, on the one hand, and the shareholders, on the other. Under the Insurance Act, participating policy holders can attend and vote at all annual meetings. If a company were to split the par value of its shares ten to one it would immediately multiply the voting power of its shareholders by 10 without changing the voting power of its policyholders. This provision states that if they split below \$5 then the voting power stays as it would be at the \$5 level.

Senator HUGESSEN: What about the policyholders, is it in relation to the value of their policies?

Mr. HUMPHRYS: In most cases it is one vote per policyholder.

Senator HUGESSEN: If he has \$100,000 or a thousand?

Mr. HUMPHRYS: In most cases that is so, but in some companies, in their private charters, the voting power may be in proportion to the amount of the insurance.

The Acting CHAIRMAN: I think the minimum is \$1,000 for one vote.

Mr. HUMPHRYS: It does not say.

The Acting CHAIRMAN: Shall section 4 carry?

Mr. HUMPHRYS: Subsection (2) of clause 4 grants the Governor in Council the power to provide a French or English version of the corporate name to the company.

Hon. SENATORS: Carried.

The Acting CHAIRMAN: Section 5 concerns the municipal securities. It only adds, I think, that the provision for the company to have indebtedness secured by rates or taxes levied on the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes.

Mr. HUMPHRYS: Clause 5 deals with all the investment powers. Subclause (1) grants power to companies to buy bonds of fabriques.

Senator HAYDEN: Of what?

Mr. HUMPHRYS: Of fabriques of parishes. There has been some dispute over the question of whether a fabrique is a corporation within the meaning of that term in the act. This is put in to clarify the point.

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause 2 enables companies to invest in a range of bonds that are secured by provincial subsidies. It is intended mostly to take care of hospital bonds where provincial subsidies are granted to meet the principal and interest. The present act enables companies to invest in that type of bond, but it says "if they are subsidized by virtue of a general or private act of a province of Canada heretofore passed". So, the words "heretofore passed" are struck out, so it is not limited to cases that were authorized at the time that provision was enacted.

Senator HAYDEN: Is this dealing with a public hospital or private hospital? Maybe my terms are not exact, but what I have in mind is, for example, in Ontario you have the Ontario Hospital Act, and a hospital may qualify and be governed by that act, in which event they get certain assistance, but their ability to earn money is very limited.

Mr. HUMPHRYS: Bonds would only qualify under this provision if they are secured by the payment, assignment or transfer to a trust corporation in Canada of subsidies, payable by or under the authority of a province, sufficient to meet the principal and interest.

Subclause 3 permits—

The ACTING CHAIRMAN: Shall subclause 2 carry?

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause 3 permits a company to invest in mortgage bonds where the bonds are secured by a pledge of leasehold property. At the present time the words are just "real estate". There was some doubt whether that term was sufficiently wide to cover a property that is a leasehold property. There have been recently a number of very large real estate projects built on leasehold properties, so this is put in to clarify that point.

Senator HAYDEN: That is very useful.

The ACTING CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause 4 is not changed in principle but is more a drafting change. At present a company can buy debentures of a corporation if the common or preferred shares of that corporation meet a five-year dividend record. The present requirement for common shares requires a seven-year dividend record. A proposal in the bill will change that seven years to five years and consequently we can deal with the qualification of debentures by cross-reference rather than spelling it out.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall subsection 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Subsection 5?

Mr. HUMPHRYS: Subclause 5 deals first with guaranteed investment certificates, and the change there is just the same as the one I have described for debentures. That is, it is using a cross-reference technique rather than spelling out the dividend qualification. It enables a company to buy guaranteed investment certificates of a trust company if the trust company's common shares or preferred shares qualify as investments.

Paragraph (k) does the same thing for preferred shares.

Paragraph (l) deals with common shares. It changes the qualification from a seven to a five-year dividend record, and adds a new test, an earnings test. So that common shares will qualify if the issuing corporation has a record of earnings in each year of five years sufficient to enable it to have paid a dividend at the prescribed rate, whether the dividend was in fact paid or not.

Senator McCUTCHEON: On that point, I would like to ask Mr. Humphrys a question. Who determines what the earnings are? With all the complications we have in the Income Tax Act today we have companies that pay 52 per cent, we have companies that pay 30 per cent, and we have companies that announce publicly that they have arranged their affairs so they will only pay 5 per cent. Some of us have some doubts as to what their earnings are.

The ACTING CHAIRMAN: It is at least 4 per cent.

Senator McCUTCHEON: But what are the earnings?

Senator HAYDEN: What do you calculate the 4 per cent on?

Mr. HUMPHRYS: If the financial statement shows the company has funds available to pay a dividend—that is, it would have had to meet all its prior charges in the way of interest and preferred dividends. If it has funds available sufficient to have enabled it to pay a dividend of 4 per cent on the value at which the shares are carried in the capital stock account of the company, then it would qualify.

Senator HAYDEN: You are talking about the corporate balance sheet.

Mr. HUMPHRYS: Yes.

Senator McCUTCHEON: Before or after depreciation?

Mr. HUMPHRYS: After depreciation.

Senator HUGESSEN: I am not quite sure of the extent to which paragraph (k) goes. This is at the bottom of page 10:

- (k) the preferred shares of a corporation if
 - (i) the corporation has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
 - (ii) the common shares of the corporation are, at the date of investment, authorized as investments by paragraph (1);

Does that mean that if a company had, say, a small issue of common shares on which it had earnings of 4 per cent for the previous five years, and then made a large issue of preferred shares, say, 6 or 7 per cent preferred shares, that they would become automatically qualified?

Mr. HUMPHRYS: Yes, they would. There is no change in that respect. The present act is in substantially the same form.

Senator HUGESSEN: Why? Haven't you got a situation there where it might be questionable whether the company should be permitted to invest in preferred shares?

Mr. HUMPHRYS: You could have a case where a company had no preferred shares outstanding, but had a satisfactory dividend record on its common shares, and then issued a new issue of preferred shares and they would qualify as investments under the present act and in this provision.

Senator HUGESSEN: You say there is no change here?

Mr. HUMPHRYS: No change in principle because the present act says preferred shares qualify first where a dividend has been paid in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or if it has paid a dividend in each year over a period of five years ended less than one year before the date of investment upon its common shares of at least 4 per cent. Now this change instead of spelling out that dividend requirement is just a cross-reference. But the point you make is a valid one both for the present legislation and the proposed legislation.

This 4 per cent would be 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during

the year in which the dividend was paid. That is to say a certain amount would be shown as capital, and if the dividend was 4 per cent of that, then it would qualify.

Senator HAYDEN: The book value then must mean the cost of the shares?

Mr. HUMPHRYS: We are looking at the position of the company which issued the shares.

Senator HAYDEN: The price at which the shares were issued.

Mr. HUMPHRYS: The amount credited to the capital account of the company. They might be issued at a premium so that only a portion would be credited to the capital account.

Senator McCUTCHEON: Senator Hugessen has raised a situation where an unwise manager might invest in shares that he should not have invested in, but if we are going to try and test every situation, then we had better rewrite the act and say "You will apply to the Superintendent of Insurance to determine whether you can make an investment or not," and with all respect to Mr. Humphrys I think he is as liable to make some mistakes as the managers of the company.

Mr. HUMPHRYS: I think the same point arises. A company might have a small issue of preferred shares on which it has paid dividends for five years, and suddenly make a much larger issue and the new issue would also qualify.

Senator McCUTCHEON: It is impossible to spell out all these things.

Mr. HUMPHRYS: We are not quite finished with subclause five. There was a change in the investing powers by paragraph (m), at the end, which permits companies to invest in mortgages up to a maximum of 75 per cent. They will also be able to invest in mortgages on leasehold property. This is a tidying-up because they can already make a loan on leasehold property.

The ACTING CHAIRMAN: Shall paragraph 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Now we come to subsection 6.

Mr. HUMPHRYS: This deals with the power to purchase real estate for the production of income where the real estate is leased to corporations on a long-term basis and the corporation has a steady dividend record. This will expand the power to enable companies to invest in such real estate when it has been leased to a government or a government agency as well as to corporations whose preferred and common shares qualify. It will also raise the maximum limit on a single parcel of real estate from one per cent to 2 per cent.

Senator HAYDEN: Is this an intentional difference? In the present act it says "in real estate or leaseholds for the production of income in Canada or any country in which the company is carrying on business either alone or jointly with any other company". That is what is in the statute now. I would read that as meaning it could join with some other company either in Canada or elsewhere outside of Canada where it is operating, whereas in the amendment you have proposed it is limited to Canada.

Mr. HUMPHRYS: The word "company" in the present act was defined as being a company incorporated under the laws of Canada. So that if we read the present law the word "company" means a federally incorporated insurance company. This change is intended to broaden this to enable companies to join with any other insurance company doing business in Canada—they could join with British companies, foreign companies or provincial companies. But under the present law they are limited to only federally incorporated companies.

Senator McCUTCHEON: Let me pursue that. It says in the act that a company may invest in real estate or leaseholds for the production of income in Canada

or in any country in which the company is carrying on business, and so on. Many Canadian life insurance companies carry on business in the United States. So what you are saying here, and I had not realized this until Senator Hayden raised the point and now I wish to question it—what you are saying is that, for example, the Sun Life Assurance Company, to pick a name, cannot go into partnership in the United States in this type of business with an American insurance company, and in this case I shall not pick a name, which does not do business in Canada.

Mr. HUMPHRYS: That would be the effect of this provision.

Senator McCUTCHEON: What is the purpose of that?

Mr. HUMPHRYS: Well, there is a limitation—

Senator McCUTCHEON: Previously you could go into partnership with Metropolitan Life or the Prudential or the John Hancock company. What is to prevent Sun Life or National Life going into partnership with an American life insurance company which does not do business in Canada? Surely that comes under American law. This is American business we are talking about and you are not the government there. But since we do business down there we have to comply with both your laws and the American laws. The policyholders of Canada would not have their rights in risk by what we do in the United States. So why the restriction?

Mr. HUMPHRYS: I would say that to some extent I believe the position of the Canadian policyholders is affected, because the whole company stands behind all its obligations. It does not divide its obligations between one country and another. But in dealing with the question of joint ownership of real estate it was thought wise to proceed rather carefully, and as a consequence when power was first granted to buy this type of real estate the question of joint ownership was rather narrowly examined. It was found there were many disadvantages to joint ownership of a property, so it was thought, in the first instance, that the range of partners should be limited to companies that were in the same type of business, and companies that we knew. When it is now being expanded as a further step it was thought not unreasonable to restrict it to companies that are in the insurance business and with which we have at least some acquaintance by reason of the fact that they are doing business in Canada, and we have access to their annual statements. We know something about them, about how they operate and what kind of people they are. Whereas, if you throw it wide open for any company in a foreign country it would be very much wider, and we would be moving into a field that we would be not so sure of.

Senator McCUTCHEON: I suggest, Mr. Chairman, with all due respect, that there are many insurance companies incorporated and doing business in the United States—which is primarily what we are talking about here—which do not do business in Canada, and which I would regard as more reliable partners than some of the provincially incorporated companies. I would like to stand this section until the minister comes, Mr. Chairman.

The ACTING CHAIRMAN: Very well. Paragraph (p)?

Mr. HUMPHRYS: Paragraph (p) is new. It would enable companies to invest in real estate that is not of the lease-back type that I have described but which has an earnings record for at least a period of three years such that if those earnings continue in the future they will yield the company a reasonable return on its investment, and in addition repay at least 85 per cent of the investment over the remaining economic lifetime of the property not exceeding 40 years. That is roughly the same test that is applied in the lease-back case.

Senator HUGESSEN: If (p) stands over you have the same thing, Senator McCutcheon?

Mr. HUMPHRYS: The same range of partners is contemplated.

Senator McCUTCHEON: I think that should stand as a matter of principle.

The ACTING CHAIRMAN: Subsection 7?

Mr. HUMPHRYS: Subsection 7 permits companies to lend on the security of real estate mortgages up to 75 per cent of the property instead of 66⅔ per cent as at present.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Subsection 8?

Mr. HUMPHRYS: Subsection 8 deals with securities received by a company in the event of reorganization, liquidation or amalgamation, where those securities do not qualify under other tests. At present a company may hold such securities only for five years unless it gets authority from the Treasury Board. This removes the restriction on the ground that they do not take the securities voluntarily, so there is no strong reason for forcing—

Senator HAYDEN: They would still be subject to your scrutiny of their balance sheets.

Mr. HUMPHRYS: The valuation would have to be on the basis of its not exceeding the market but this would remove the requirement that they be written off or disposed of after five years.

The ACTING CHAIRMAN: Shall subsection 8 carry?

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause 8 also—

Senator HAYDEN: Mr. Chairman, I am glad to approve of that particular section especially in the light of the witness's remarks that the basis for valuation would be the market value.

The ACTING CHAIRMAN: Yes.

Mr. HUMPHRYS: In most cases, securities received as a result of reorganizations or liquidations might not have much of a value.

Senator McCUTCHEON: I would like subsection 4 to stand. We had quite a bit of discussion on it this morning.

Mr. HUMPHRYS: The amendment here is one that broadens the range of partners in real estate investment. Secondly, it increases the size of individual parcels of real estate in which a company may invest, and it increases the size of the basket from 5 per cent of the company's assets to 7 per cent.

Senator McCUTCHEON: All of which I approve, but I would like to hurry along a little faster—

The ACTING CHAIRMAN: Shall this subsection carry, or do you want it to stand?

Senator McCUTCHEON: No, I want it to stand until the minister comes.

Mr. HUMPHRYS: Subclause 9 changes subsection 7 to increase the maximum limit on common shares from 15 per cent of a company's assets to 25 per cent.

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subsection 8 changes the limit on real estate for the production of income. At present there is a 10 per cent limit on real estate for the production of income, whether it is of the lease-back type or whether purchased through the basket. This will continue the 10 per cent limit on real estate purchased in the basket, or real estate of the new type that I have described that would qualify on an earnings basis. However, real estate of the lease-back type will be removed from the limit.

Senator HAYDEN: From the limit?

Mr. HUMPHRYS: Yes.

Senator HAYDEN: It is a separate item?

Mr. HUMPHRYS: There will be no limit on the investment in real estate that qualifies under the lease-back provision.

Senator McCUTCHEON: You can only do that if the company's shares qualify.

The ACTING CHAIRMAN: Yes. Is that carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 6 which adds the new section 64A.

Mr. HUMPHRYS: This clause enables a life insurance company to own subsidiaries of three types; the first is life insurance companies incorporated outside Canada, the second is fire and casualty insurance companies incorporated in Canada, and the third is what I might call real estate companies.

Senator HAYDEN: This raises the question we were discussing a while ago. If a Canadian life insurance company incorporated a subsidiary in the United States, then query, could the Canadian company and its United States subsidiary have a joint purchase of real estate in the United States? It would appear from the earlier provisions that it could not.

Mr. HUMPHRYS: No, sir, it could not.

Senator McCUTCHEON: Why would you not let a Canadian life insurance company have a trust company as a subsidiary? A trust company can have a life insurance company as a subsidiary.

Mr. HUMPHRYS: No, sir, not a federally incorporated trust company.

Senator McCUTCHEON: Well, why are we putting the federal companies under this disability?

Senator HAYDEN: They have always been.

Senator McCUTCHEON: Then why continue it?

Mr. HUMPHRYS: I think in all the legislation over the years the ownership of subsidiaries has been barred, whether in respect of life insurance companies, trust companies or loan companies, or banks, or any of this type of financial institution. The reasons, I think, are—perhaps there is a number of reasons—

Senator McCUTCHEON: I suggest they are archaic and obsolete.

Senator LANG: It is a matter of policy.

Senator HAYDEN: What was the original reason?

Mr. HUMPHRYS: I think there is a number of reasons that can be put forward. There is the question of the concentration of economic power, if you like, whereby companies that have large aggregations of assets could own subsidiaries and thus build up quite an empire and be able to exercise a good deal of economic power. This was the subject of a very extensive investigation in the United States a number of years ago.

Senator McCUTCHEON: Back in 1907.

Mr. HUMPHRYS: Another problem is that in parent-subsidary set-ups it becomes more and more difficult to assess the real financial position as the financial structure becomes more complicated with subsidiaries.

Senator HAYDEN: They have that limitation in the Bank Act. It is the difference between investment and the carrying on of your own business. That is a provision that has been carried forward with every revision of the Bank Act. The Bank Act allows investment in industrial concerns, but when that investment gets to such a size that control may be exercised then it may be well suggested that the bank is carrying on a business, and it cannot do that. Possibly you have the same idea here.

Mr. HUMPHRYS: Yes, and there is the additional principle, that these companies are incorporated by special Act of Parliament with defined powers. If they were able to own a range of subsidiaries it might open a way to them into all kinds of activities far beyond the purposes for which they were incorporated.

Senator HUGESSEN: I can see the objection to a trust company's owning shares of an insurance company, because, after all, a trust company is supposed to manage, and does manage, enormous amounts of assets belonging to other people. If it has an insurance company as a subsidiary it could end up by putting an awful lot of money into its own company.

Mr. HUMPHRYS: It is not empowered to own a subsidiary insurance company.

Senator HUGESSEN: That is what I say.

Senator HAYDEN: The senator is giving his idea of the reasons why it should not have that power.

The ACTING CHAIRMAN: Shall section 6 carry?

Senator McCUTCHEON: Just a minute. If the minister is to come before us, I would like to stand this section.

The ACTING CHAIRMAN: Stand.

Senator HAYDEN: I would like to get an appreciation of that. Is it the reason, that you think that the insurance companies or trust companies should be able to own life insurance? That is not covered by this section.

Senator McCUTCHEON: I say that federally incorporated life insurance companies, if they are now being allowed to have wholly owned subsidiaries who are engaged in the fire and casualty business—all I want to know from the minister is why should not they have a wholly owned trust company. After all, with the amendments of the act made a few years ago, the two types of company are in much greater competition than they ever were. I just do not appreciate the reason for the limitation. I am not going to ask Mr. Humphrys for the answer. I do not think that would be proper.

Senator HAYDEN: It would not be just a trust company—

Senator McCUTCHEON: In the case of the shares of any life insurance company in Canada, no one can do anything about it.

Senator HAYDEN: That is because it is incorporated.

Senator McCUTCHEON: That is because it is a trust company, Mr. Chairman.

Mr. HUMPHRYS: On the point of a general insurance company, I should point out that under the present law a life insurance company can, with Treasury Board approval, get into other lines.

Senator McCUTCHEON: It is quite true, but you are getting into this field now which we touched on—and I think Senator Hayden is interested in it—that you cannot buy the stock of many casualty companies at their book value. It is one thing to get Treasury Board approval and if you have accumulated \$100 million you can get into the casualty business; but if you go out and try to get control of casualty business I expect you will pay much more than the book value.

Mr. HUMPHRYS: On the experience of casualty companies in recent years, I am not so sure of that.

Senator McCUTCHEON: I know of one company and you cannot buy it for the book value.

Mr. HUMPHRYS: This bill would enable a casualty company, if it wishes to form a subsidiary for fire and casualty business, to do so. I would suggest this is a better approach than doing it through a separate fund within the company, because casualty business in general is so different from life insurance that it is better to do it other than through the fund.

Senator McCUTCHEON: I am not criticizing the power or the additional rights. I quite approve of that.

Senator HAYDEN: You are just in a hurry, again.

Mr. HUMPHRYS: On the point of a trust company subsidiary, I would suggest that the job of running a life insurance company is not an easy one and whether the management should get into running the trust company as well is, I think, a rather serious question.

Senator McCUTCHEON: That is an argument on the section.

The ACTING CHAIRMAN: You wish the section to stand?

Senator McCUTCHEON: I would like it to stand.

Senator HAYDEN: Under this section, the bill gives the life insurance company power to invest its funds in the fully paid shares of (a) any corporation incorporated outside Canada, to undertake contracts of life insurance, or (b) other than contracts of life insurance. This is simply an authority to invest its funds. It means further funds anywhere from 30 per cent to 100 per cent?

Mr. HUMPHRYS: Yes.

Senator HAYDEN: Because it does not need this provision in order to buy 30 per cent, does it?

Mr. HUMPHRYS: That is correct.

Senator HAYDEN: So you are really talking about a life company investing to the extent that the other company would become the subsidiary?

Mr. HUMPHRYS: That is correct, Senator. The concept here is the subsidiary.

The ACTING CHAIRMAN: Clause 6 stands.

Mr. HUMPHRYS: Clause 7 enables an insurance company to buy a residence and hold it temporarily where the question is one of changing the place of employment of an employee.

The ACTING CHAIRMAN: Clause 7 is carried.

Mr. HUMPHRYS: Clause 8 modifies the valuation provision applicable to all securities and stocks other than those that may be valued on an amortized basis.

Senator HAYDEN: This is the three-year moving provision.

Mr. HUMPHRYS: Yes. It enables companies to spread the effect of an amortized market drop over three years.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: It is carried.

Mr. HUMPHRYS: Clause 9 is a technical clause. At the present time companies can establish a separate fund in connection with contracts of the so-called variable type, where the companies' liabilities are limited to the market value of the assets in the fund. They are empowered to contribute an amount to start the fund. But under present law they could not withdraw that until the fund was wound up. This change would enable them to withdraw it once the fund was operating, subject to the Superintendent's approval.

Some Hon. SENATORS: Carried.

The ACTING CHAIRMAN: It is carried.

Mr. HUMPHRYS: Clause 10 enables the Superintendent of Insurance to grant a company authority to use a higher rate of interest than is prescribed in the law, in calculating the actuarial reserves in respect to a particular class of policy.

At present, companies have to calculate their actuarial reserves on a rate not exceeding $3\frac{1}{2}$ per cent for insurance and 4 per cent for annuities, but in some cases of annuities they are in competition with trust companies at a much higher rate, and they are guaranteeing rates perhaps $4\frac{1}{4}$ per cent, $4\frac{1}{2}$ per

cent; and if they have to calculate the reserves at 4 per cent it puts a strain on them. This would enable the Superintendent to authorize a higher rate where the circumstances warranted.

Senator McCUTCHEON: Otherwise you can theoretically lose hundreds of thousands of dollars on your balance sheet the minute you put a case on your books.

Mr. HUMPHRYS: There would be quite a strain in setting up the actuarial reserves.

Senator HAYDEN: I take it you will have regulations or conditions for doing this?

Mr. HUMPHRYS: The company wishing to use a higher rate than that prescribed in the law would have to apply to the Superintendent and produce evidence to him that the higher rate is appropriate.

Senator McCUTCHEON: If their net earnings were over 6 per cent, you might approve 5 per cent?

Mr. HUMPHRYS: We would look at the nature of the policies, the nature of the guarantee and the duration of the guarantee.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: It is carried.

Mr. HUMPHRYS: Clause 11 is consequential on section 64A. At present, section 86 prevents a company being interested in the formation of a new company; but now, since they are being given power to own subsidiaries in certain circumstances—

Senator HAYDEN: This is consequential on clause 6, dealing with section 64A?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: It is carried.

Mr. HUMPHRYS: Clause 12 would enable a life insurance company to purchase the shares of another life insurance company for the purpose of eventual amalgamation or merging. At present, they have the power to merge or amalgamate, but they cannot purchase the shares for that purpose. Consequently, the existing amalgamation power sometimes cannot be used because of income tax restrictions and other complications. This would enable a life company to purchase the shares of another life company, but only if it takes the succeeding steps to amalgamation.

Mr. HOPKINS: Three-quarters of the votes cast.

Mr. HUMPHRYS: It requires substantial approval of a meeting of both companies and also is subject to the Treasury Board approval. The provisions are the same as already appear in the Trustee Companies Act and the Loan Companies Act.

Senator HAYDEN: I suppose it is a kind of amalgamation. But the question is, how do you amalgamate with yourself? You have two entities, but you have the same shareholders for the two companies.

Mr. HUMPHRYS: The parent company would take over the assets and liabilities of the other company, by agreement, and the other company would remain as a shell without any assets or liabilities.

Senator HAYDEN: If they wound it up, it would create problems.

Mr. HUMPHRYS: Not if it has no assets. The procedure followed is that they take over all the assets and liabilities.

Senator HAYDEN: For nothing?

Mr. HUMPHRYS: If the remaining company winds up, there would be nothing to distribute.

Senator HAYDEN: Even on that basis, on a winding up shares distribution, the idea you would expect is that they would keep the shell alive, instead of winding it up.

Mr. HUMPHRYS: I think that if it has no assets or liabilities left, there is no tax problem. I know the procedure has been followed of taking over the assets and liabilities, the whole business, by agreement; and if nothing is left in a disappearing company—

Senator HUGESSEN: The whole operation under this section has to be with your approval and with that of the Treasury Board?

Mr. HUMPHRYS: That is correct.

Senator HAYDEN: I am not questioning the propriety or the need for this section, it is a question of whether the national revenue provision will agree that it goes for enough.

Senator LANG: I think you must have actual assets there as an investment.

The ACTING CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 13?

Mr. HUMPHRYS: Clauses 13 to 17 inclusive, apply to British companies, and with one exception they enact the same changes for investments that British companies can vest in trust in Canada for the protection of their policyholders, as we have just discussed. The one difference appears in subclause (6) of clause 13, on page 20 of the bill. At present British companies can vest in trust debentures of a Canadian corporation or guaranteed by a Canadian corporation. This change in clause 6 would enable them to vest in trust debentures issued by a Canadian corporation, if the guaranteeing corporation meets certain dividend requirements.

Senator McCUTCHEON: Mr. Chairman, in taking a quick glance, I am assuming that none of the sections I have asked to stand are repeated in these sections?

Senator HAYDEN: Yes, they are.

Mr. HUMPHRYS: The substance is repeated senator. The provision, for example, dealing with investment in real estate and the partners.

Senator HAYDEN: On page 22.

Mr. HUMPHRYS: With any company transacting business in Canada.

Senator McCUTCHEON: Because if many of these provisions are going to be repeated in the bill, I would like my reservations to apply to all of them.

Mr. HUMPHRYS: In this context—the partners, for example—we are speaking of a British company and saying to it that as respects assets it is holding in Canada for the protection of Canadian policyholders, it can only join as a partner with other insurance companies transacting business in Canada. So the point you were making earlier does not apply here.

Senator McCUTCHEON: I appreciate that. I just want to reserve my rights or my position because, after all, here we are dealing with a foreign insurance company and dealing only with a limited group of its assets which are segregated to protect these policyholders, which is quite different.

The ACTING CHAIRMAN: If there is any change made in any section that is already standing, then the other provisions will be discussed and will have a similar effect, Senator McCutcheon.

Senator McCUTCHEON: Yes.

Senator HAYDEN: Except that we might very well not want to change the section in relation to British companies, even if we wanted to change the other.

Senator McCUTCHEON: We might well not agree, but I don't want to be debarred from discussing them.

Senator HAYDEN: Well, we will not debar you.

The ACTING CHAIRMAN: Shall these sections carry?

Senator HAYDEN: Yes, subject to that reservation.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 18?

Mr. HUMPHRYS: Section 18 enables the companies to invest in securities issued by Jamaica, Trinidad and Tobago. There are not covered at present, because the present provision says that bonds of any colony of the United Kingdom qualify. Since these countries have become independent they do not qualify under the colony head and had to be named separately if included.

The ACTING CHAIRMAN: Shall section 18 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Part II—Foreign Insurance Companies Act.

Mr. HUMPHRYS: Part II does for the foreign insurance companies what clauses 13 to 17 did for British insurance companies.

The ACTING CHAIRMAN: Shall Part II carry, subject to the same reservations made by Senator McCutcheon?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: We come to Part III—Turst Companies Act, commencing with clause 27.

Mr. HUMPHRYS: Clause 27 grants the Governor in Council power to provide a company with French or English versions of its corporate name.

The ACTING CHAIRMAN: Shall section 27 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 28 deals with the qualification of directors. I think it is the same as the other section.

Mr. HUMPHRYS: Yes, it goes up to \$500.

The ACTING CHAIRMAN: Shall section 28 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 29?

Mr. HUMPHRYS: This enables a company to divide into shares of one dollar minimum.

Senator BURCHILL: Are these all new?

Mr. HUMPHRYS: They now can subsidize the par value to \$10. This would enable them to come down to \$1.

Senator HAYDEN: It does not change anything in relation to voting?

Mr. HUMPHRYS: One vote per share, but there are no other voters but the shareholders.

The ACTING CHAIRMAN: Shall section 29 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 30?

Senator HAYDEN: Dealing with "on-resident"?

The ACTING CHAIRMAN: Yes. Shall these sections carry?

Senator McCUTCHEON: On division. I vote against.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 31?

Mr. HUMPHRYS: Section 31 makes a change in the requirements for the auditor's report. It requires them to report on the results of the operations of the year as well as merely on the condition at the end of the year.

Senator HAYDEN: What have you in mind there? How can you do that? You prepare a statement for the fiscal year of the company, and in the profit and loss account you are reflecting the operations of the year, are you not?

Mr. HUMPHRYS: Under the present wording, they have to certify only to the state of affairs at the end of the year, so in some cases they certify only to the balance sheet and not to the profit and loss account.

Senator HAYDEN: They do not say that reflects the result of their operations?

Mr. HUMPHRYS: Not necessarily. Well, I think they would say it would reflect them, but this expands the nature of the auditors certificate.

Senator HAYDEN: Is there a form—have you a settled form?

Mr. HUMPHRYS: There is no specific form. This is a common form used by auditors.

Senator HAYDEN: What would the auditors have to say?

Mr. HUMPHRYS: He would in his certificate use substantially these words that in his view it shows satisfactorily the assets and liabilities of the company and the result of the operations of the year.

The ACTING CHAIRMAN: Shall section 31 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 32?

Mr. HUMPHRYS: Section 32 enables trust companies to invest guaranteed and unguaranteed trust funds in real estate mortgages to the extent of three-quarters of the value of the real estate instead of two-thirds.

The ACTING CHAIRMAN: Shall section 32 carry?

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause (2) raises the limit of investment in common shares from 15 per cent to 25 per cent common shares.

The ACTING CHAIRMAN: Shall subclause (2) carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Subsection (3)?

Mr. HUMPHRYS: Subsection (3) enables companies to lend unguaranteed trust moneys on the security of real estate mortgages up to 75 per cent instead of 66⅔ per cent; and subclause (4) deals with lending powers and raises the two-thirds limit to 75 per cent.

Senator HAYDEN: One question, Mr. Chairman. In working up as high as we have done in this respect, what would you think, Mr. Humphrys, of the idea that some part of the increase should be required to be insured?

Mr. HUMPHRYS: Up until quite recently, senator, we have had no facilities in Canada for providing mortgage insurance. There is a company now in operation—it was incorporated by Parliament at the last session, and it is in operation—but it has a very limited experience yet, and I think we are hardly in a position to lay down a requirement that a company must seek mortgage insurance for any particular portion of a mortgage loan. I think it is conceivable that if mortgage insurance proves to be a successful enterprise and the facilities become—

The ACTING CHAIRMAN: More available?

Mr. HUMPHRYS: Yes, more available, the concept might well be considered. I would think that up to 75 per cent—while any increase you make in the ratio of the loan to the value of the property inevitably increases the

risk of the loan—in the present pattern of real estate mortgages, having in mind the monthly amortization and what is being done by other jurisdictions, we in the department, at least, did not feel justified in opposing this request by the industry on its own terms.

Senator HAYDEN: But you know there are many problems. If a mortgage goes wrong, say on a 75 per cent basis, quite apart from appraisal value or general market conditions there might be deterioration in the property itself, physically. Then there is the problem of the time it takes to secure control of the property. Then there is the rehabilitation and loss of income in the meantime, with no interest, and taxes accumulating. It would not take long, maybe, to eat up a substantial part of that here.

Mr. HUMPHRYS: I think that is a valid point, senator. As the ratio of the loan to the appraised value of the property rises, I believe you do get into a somewhat greater risk area.

Senator WALKER: On the other hand, under the C.M.H.C. you have this up to 95 per cent, and it was 90 and before that 85, and where they are insured there is very seldom any call on the insurance fund. So much so they are considering reducing the rate of insurance. So I would think that with a 25 per cent leeway you would not get into any trouble here.

Mr. HUMPHRYS: The experience has been good since the war.

Senator McCUTCHEON: The whole basis of monthly amortization is completely different from what it was during the war, where you went from six months to five years without any repayment in principal, and you found you were in trouble. Your problem now is you get your money back too rapidly in the life insurance business. I do not think the managers of life insurance companies need to be wrapped in cotton wool.

Senator HAYDEN: I was not trying to wrap them in cotton wool or asbestos or anything else. I was trying to take a reasonable look into the future.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 33?

Mr. HUMPHRYS: Section 33 makes the same change as respects eligibility of common shares for the trust companies, made in the same connection for insurance companies.

The ACTING CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 34?

Senator McCUTCHEON: Senator Hayden, that is your section.

Senator HAYDEN: I would like to have that stand and be considered at the same time that we consider section 41 and section 42.

Mr. HUMPHRYS: Mr. Chairman, there are two more subclauses in clause 33 I might comment on.

Senator HAYDEN: That is right.

Mr. HUMPHRYS: Paragraph (j) under subclause (1) deals with common shares. Paragraph (k) enables companies to invest their own funds in mortgages up to 75 per cent. That is the same change we discussed, but with regard to the company's own funds instead of trust funds.

Subclause (2) enables the company to lend its own funds on real estate mortgages up to 75 per cent.

Subclause (3) removes the limit that now exists on the maximum investment in preferred shares. There was formerly a limit on shares of all types, but by repealing subsection (8) the limit on preferred shares is removed.

Subclause (4) deals with the limit on investment in common shares for the company's own funds and sets that at 25 per cent. At present that limit

applies to common and preferred and not only to investment but also to collateral loans.

Senator WALKER: What is it at the present time?

Mr. HUMPHRYS: For guaranteed trust funds it is 15 per cent. For a company's own funds there is a limit of 25 per cent on preferred shares, common and on all collateral loans made on the security of shares. This changes it and makes the limit applicable only to investment in common shares.

Senator HAYDEN: In dealing with section 34—

Senator McCUTCHEON: Stand.

Senator HAYDEN: You do not need to stand the whole section. It is really subsections 5 and 7. Subsections 3 and 4 do not present any problem. You are really expanding the limit on borrowing?

Mr. HUMPHRYS: Yes.

Senator HAYDEN: If the committee wants to pass those, there is nothing there.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: You would only stand subsections 5, 6 and 7?

Senator HAYDEN: Yes, subsections 5, 6 and 7.

The ACTING CHAIRMAN: Subsections 5, 6 and 7 stand.

Now we go to Part IV, Loan Companies Act.

Mr. HUMPHRYS: Clause 35 deals with the French or English name.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 36, qualification of directors.

Mr. HUMPHRYS: Section 36 deals with the qualification of directors.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 37, shares.

Mr. HUMPHRYS: Clause 37 permits the subdivision of the par value of shares, the same as for trust companies.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 38 has the same effect as the other clauses we have dealt with.

Mr. HUMPHRYS: Non-resident ownership.

Some Hon. SENATORS: Carried.

Senator McCUTCHEON: Carried, on division, despite Senator Hayden's opinion.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: It goes on to section 39, page 53.

Mr. HUMPHRYS: It deals with the auditors' report, the same as for trust companies.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 40, common shares.

Senator HAYDEN: That is the same, the earnings.

Mr. HUMPHRYS: That is the same amendment as we discussed in common shares. Paragraph (e) is the same amendment as respects real estate mortgages.

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subsection (2) also deals with real estate mortgages, but the lending power instead of the investing power.

Hon. SENATORS: Carried.

Mr. HUMPHRYS: Subclause (3) raises the limit of common stocks from 15 per cent to 25 per cent.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 41?

Senator HAYDEN: Stand.

The ACTING CHAIRMAN: Section 42, stand?

Senator HAYDEN: No, I have no objection to section 42(1) and (2). This again is where you expand the borrowing powers. It is subparagraph (3) I want to stand.

The ACTING CHAIRMAN: So, shall subparagraphs 1 and 2 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: And subparagraph 3 stands.
Section 43?

Mr. HUMPHRYS: Section 43 is a technical amendment. There is a provision limiting the type of real estate a company can hold. There was no reference in the section to real estate purchased as an investment pursuant to the investment powers, so this is being added to tidy up that point.

Senator HAYDEN: I did not get that.

Mr. HUMPHRYS: At present there is a provision in the act specifying the power of a company to hold real estate. It can hold real estate it had acquired for its own use or by way of security; but it does not give them the power to hold real estate in which they were entitled to invest by virtue of another section. So we are putting a provision in here to remove that anomaly.

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 44?

Some Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall we wait until tomorrow morning, when the minister is going to be here at 9.30? Shall we adjourn until 9.30 tomorrow morning?

Senator LANG: I notice that the transportation committee is meeting in this room tomorrow morning at 10 o'clock.

The ACTING CHAIRMAN: We have to be here to hear the minister at 9.30. We will meet upstairs.

Senator HAYDEN: No, we can meet here.

The ACTING CHAIRMAN: Yes, we can meet here.

Mr. HOPKINS: The standing committee on Transport and Communications could meet here, presumably, immediately after we rise.

The committee adjourned.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, March 18, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-123, to amend certain acts administered in the Department of Insurance.

Senator Paul-H. Bouffard (*Acting Chairman*), in the Chair.

The ACTING CHAIRMAN: Gentlemen, we have a quorum. We have with us this morning the Honourable Walter L. Gordon, Minister of Finance. I want to tell him we are very pleased to have him here to give further explanation of some of the principles of this new legislation.

So as not to detain him too long, I shall start right away by asking members of the Senate to put to Mr. Gordon now any questions they wish to ask.

Senator McCUTCHEON: Mr. Chairman, we stood a number of clauses last evening so that Mr. Gordon could be here. Should you not call the clauses concerned and proceed in that way?

The ACTING CHAIRMAN: The first is in clause 3, dealing with proposed section 16F. We are concerned with subsections (4) and (7), which are given on page 7 of the bill. Subsection (4) deals with the change of status of corporate resident. Subsection (7) deals with entry after the prescribed day. These two subsections were stood yesterday.

Senator McCUTCHEON: These must have been stood before I came in yesterday afternoon. I have no comments.

Mr. HUMPHRYS: These subclauses are part of the plan limiting non-resident ownership. I do not think there was any particular discussion on those clauses.

The ACTING CHAIRMAN: Are they carried?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: The next point is on page 12. It is clause 5 of the bill, dealing with proposed changes in section 63, subsection (1), adding new paragraphs (o) and (p).

Mr. HUMPHRYS: Honourable senators will recall that these two paragraphs dealt with authority to invest in real estate for the production of income. Paragraph (o) deals with real estate or lease holds and paragraph (p) deals with real estate of a new type that would qualify on the earnings test.

Senator CROLL: I think the question was on the limitation on companies in Canada in doing that.

Mr. HUMPHRYS: The discussion was on a Canadian company entering into general investment with other companies.

Senator McCUTCHEON: The question I had was this. The provision allows companies to invest in real estate or lease holds in Canada, or in any country in which the company is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan company or trust company incorporated in Canada. There are

many Canadian life companies who do business in the United States, for example. I raised the question as to why, if you want to go into partnership on a piece of real estate or lease hold, you should be limited to going into partnership with another Canadian life insurance company. Why should you not be able to use a United States partner, for the benefit of his local knowledge, and so on?

Honourable Walter Gordon, M.P., Minister of Finance and Receiver General: Mr. Chairman and honourable senators, let me put it this way. One of the objectives of this bill is to remove some of the present restrictions on life insurance companies in regard to investing; and this is being done in a variety of ways.

Senator McCUTCHEON: With which we are all very happy.

Hon. Mr. GORDON: I think there seems to be general agreement on that. Now, it is always a question of judgment and balance as to how far you can go. Some people have said to me that this bill goes a little too far. At the other extreme there are people who would suggest there should not be any restrictions at all.

Senator McCUTCHEON: I have not gone that far yet.

Hon. Mr. GORDON: Why not?

Senator McCUTCHEON: I can make it a case.

Hon. Mr. GORDON: Anyway, those are the two extremes; and we thought we had gone quite a distance in loosening things up in this bill. If you press me as to why we did not go farther, I would have to say I think that our feeling was at this stage that we probably had gone far enough. After all, the federal Government, through the Department of Insurance, has a proper and heavy responsibility to supervise the insurance industry. I feel a little hesitant to extend these investment powers farther than we have done in this bill at this stage.

Your point about partnerships with U.S. companies is an understandable one. The way the bill reads now, the Superintendent is familiar with the people who would be included in these partnerships. If this was extended to anybody in other countries he would not have quite the same knowledge of who these prospective partners might be. I am rather inclined to think, Senator McCutcheon, that this will give a lot more freedom than the insurance companies have at the present time, and we should see how it works.

Senator McCUTCHEON: I agree that it gives them more freedom and I am delighted with that. I take it that your mind is not firmly closed, that you might look at this again?

Hon. Mr. GORDON: I think we will have to look at this again, on this and on a number of other points, after we have seen how this works. The changes in this bill are fairly extensive, and so far I think there has been a pretty good public reaction to it. I do not think this is the last word, by any means.

Senator McCUTCHEON: Carried.

The ACTING CHAIRMAN: Carried. What about subsection (b)?

Senator McCUTCHEON: The same, Mr. Chairman.

The ACTING CHAIRMAN: Carried.

The next is subparagraph (4) on the top of page 14.

Senator McCUTCHEON: Mr. Chairman, I can speak very shortly to this. This is the basket clause the Superintendent described to us yesterday. He gave us some of the history of the clause, which was produced in 1948 or 1949 in the first instance, and there was a 5 per cent limitation on the total amount of assets in the basket, plus quantitative and qualitative limitations of certain

classes of assets, such as mortgages, real estate, and the percentage of the common shares of a company which could be acquired and put in the basket.

Mr. HUMPHRYS: Three per cent, raised to 5 per cent in 1960.

Senator McCUTCHEON: Thank you. I think it is fair to say that the Superintendent indicated that the experience had been quite satisfactory, that while in theory a company could go out and fill the basket with speculative penny mining stocks and as long as it did not have more than 30 per cent in any one company, the Superintendent might note it in his report and view it with alarm.

Hon. Mr. GORDON: You are not thinking of Windfall are you?

Senator McCUTCHEON: Well, if you get them quickly enough, that would be all right. The fact is that the managements of the companies have very wide powers in investment under this section as it was formerly drawn and as it is now drawn. The fact is, the evidence is that they exercised the duties of managers with discretion and judgment and that there have been no unfortunate occurrences in giving them these wider investment powers. I suppose this is the place where you might say, as the minister has suggested, some people do not want any restrictions at all. I am not taking that extreme position, but I am asking what is your objection to putting companies in the position where they can put 7 per cent of their assets broadly in any sort of thing they want? Why should you continue to put quantitative and qualitative restrictions on certain classes of the assets that they can put in there. I know this has been raised, and this is an improvement, but specifically, why should there be any limitation on the value of one parcel of real estate you can put in a basket? Why is one per cent right and one and a quarter per cent wrong? Why should there be any limitation on the amount of common stock that a particular company can put in the basket?

If we are looking for risk capital, and you know how enterprise in this country operates, which is financed largely by the life companies, there are cases where it would be highly imprudent to take up 30 per cent of the shares of a company in what I call risk capital, but prudent to take 60 per cent where during a development you could exercise the control. Later on, if you wished to divest yourself, you could, and if you divested yourself sufficiently and the stock qualified, you could move out of the basket and into your regular stream of investments, and have some more room in the basket. Those are matters that I put to the minister.

It seems to me that the basket might well be a completely open basket.

Hon. Mr. GORDON: Well, I think this falls more or less logically, as you said a few minutes ago, in another class. There are other considerations. Some people advocate that there should be no restriction on life insurance companies acquiring control of other businesses in any field; and we feel, for instance, that if a life insurance company wants to acquire a trust company or loan company—

Senator McCUTCHEON: I feel it should be able to.

Hon. Mr. GORDON: —or a bank.

Senator McCUTCHEON: I would not go so far as a bank.

Hon. Mr. GORDON: Well, there are those who feel there should not be these restrictions on the inter-relationship of companies in the financial field, and this is a well argued point of view. Certainly if and when we have the pleasure of getting together to discuss the revisions of the Bank Act, this is something we will be thinking about, because there is a responsible body of opinion that sees no harm in inter-relationships of this kind in the financial field. In fact, there are people who suggest there are considerable advantages.

Against that, there are those who would like to see, I was going to say as little inter-relationship as possible—there are those who do not want to see any relationship at all. Again, we were searching here for some sort of a balance.

The bill does provide that some relationship between loan and trust companies should be permitted. But what you are suggesting would permit a large life insurance company to make a pretty substantial investment in a wholly-owned subsidiary of one kind or another. To put it bluntly, it was not considered that those sort of freedoms should be provided in this bill.

The Superintendent mentioned to me that you had also raised yesterday the question whether in the basket clause the 75 per cent point of restriction on investment in mortgages should apply or whether the management should not have the freedom at least to the extent of the basket clause to invest in a mortgage up to 90 per cent or 100 per cent, or whatever they want to.

Senator McCUTCHEON: I can now for real estate purposes. Should I not be able to take 90 per cent of that same business in real estate?

Hon. Mr. GORDON: Well, I find it difficult to argue against one particular suggestion of that kind. I might mention that in the House of Commons when this was being debated, one of the strongest objections to this bill was raised by the member for Parry Sound-Muskoka (Mr. Aiken). He thought that it was a great mistake to permit investment in mortgages to a greater extent than two thirds the value of the property, and he felt this very seriously. He thought that going up to 75 per cent was a mistake, and he argued this certainly more than once, if I remember. I am merely mentioning this to indicate that there are differences of view even among the members of particular groups in these matters.

Senator McCUTCHEON: This would be a very dull place if there were not differences in view.

Hon. Mr. GORDON: I had better keep off politics. But there are differences of view, and it would seem to me, senator, that at the moment we have struck about as good a balance as we probably can to meet the varying points of view. I think this will give the insurance companies a great deal more flexibility than they have had in the past, and I would hope that you would feel we should not push a good thing too far at this stage. This act has been reopened frequently, and I think it is going to be reopened again in the next two or three years. I would not like to see us push this further than is indicated.

Senator McCUTCHEON: I am very anxious to see the bill go through and become law, and I will not press it any more except to suggest to the minister that when he is reconsidering this, as it will have to be considered from time to time, he might think that possibly the basket clause is the area in which he could experiment a little further than he has to date.

Hon. Mr. GORDON: I do not mind telling you that my first inclination was to go further than we have gone in the basket clause, but there was quite a lot of opposition to this. This is as good a compromise as any that seemed to come out of the discussions.

Senator McCUTCHEON: Mr. MacGregor would not oppose you now in his new position.

Hon. Mr. GORDON: I am not suggesting Mr. MacGregor opposed me. I received very good advice from Mr. MacGregor, and I have received excellent advice from Mr. Humphrys. I need one or other of them to hold my hand in these matters.

Senator HAYDEN: There must be lots of volunteers for that job.

Hon. Mr. GORDON: I am not going to mention any names either.

The ACTING CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: The next one is on page 15, being section 64A.

Senator McCUTCHEON: I think the minister understands that I asked this section to be stood for exactly the same reason as I asked the other sections to be stood, and I am not going to press the matter any further this morning.

The ACTING CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: The next one is on page 44, section 34.

Senator HAYDEN: I asked to have parts of three sections stood, Mr. Chairman.

The ACTING CHAIRMAN: Yes, 5, 6 and 7.

Senator HAYDEN: I would like to speak to the minister first though on section 41, page 55, Mr. Minister. There you have a new section, section 61A, which really, so far as subsection 1 of it is concerned, parallels 64A, where you are giving a life company the power to invest money in subsidiaries. What are the terms and conditions that you envisage under section 61A? Would it have to do, for instance, with the value of the shares?

Hon. Mr. GORDON: Where is section 61A?

Senator HAYDEN: This is page 55, the top of the page.

Hon. Mr. GORDON: I am on the right page, but I wonder if you would let me have the question again.

Senator HAYDEN: Yes. What I said was that this section 61A, in relation to the right of a loan company to invest in shares of a trust company, appears in language reasonably parallel to section 64A giving life companies the power to invest their funds in subsidiary companies up to that extent. Mr. Humphrys did tell us what was meant by "terms and conditions" in relation to life company investments. What I am asking you here is, what do you envisage as to "terms and conditions" which are provided for in this section 61A on page 55?

Hon. Mr. GORDON: I was just asking Mr. Humphrys what he said yesterday on this point, and he reminded me that he is having conversations with life companies to see what recommendations he wishes to make to the Treasury Board, and I presume the same procedure will be followed here.

Senator HAYDEN: Then I take it that when this section was drafted you would not have put in the words "terms and conditions" unless you had had in mind that there should be terms and conditions and in some way what they were. What I am asking now is, would that include the proposed price it was intended to offer for the trust company shares?

Mr. HUMPHRYS: It was intended that the question of the valuation of the shares of a subsidiary on the balance sheet of the parent would be dealt with in the terms and conditions, also such matters as limitation of total investment in the particular subsidiary or subsidiaries, the powers of subsidiaries, and items of that nature.

Senator HAYDEN: When you say limitation of the value which they would be carrying, do you mean the offering price?

Mr. HUMPHRYS: Not necessarily.

Senator HAYDEN: Why not?

Mr. HUMPHRYS: Because the matter to be dealt with would be the financial statement of the company that owns the shares, and the matter to be dealt with there would be the valuation of that company's assets.

Senator HAYDEN: Do you mean you would not have any regard as to whether or not the price of the trust company's shares were being inflated by those who were offering them to the loan company?

Hon. Mr. GORDON: Senator Hayden, I am beginning to get the drift of this questioning. It is early in the morning and I did not realize at first this line of questioning might have something to do with the discussions we have had on other occasions about the World Mortgage Corporation.

Senator HAYDEN: That is right.

Hon. Mr. GORDON: This is a matter which has been discussed. There are two points of view here. The sponsors of the World Mortgage Corporation are of the view, as you know, that any investments in the shares of a trust company should be included among the assets of the World Mortgage Corporation or the loan company at the price the loan company bought them at on the market.

Senator HAYDEN: No, that was not the submission here. The submission here was the increment—

Hon. Mr. GORDON: I know, but this came along later. Later on it was suggested that merely the increment should be included in computing the borrowing ratio. This is a matter on which there has been, I think it is fair to say, some difference of opinion between those who were sponsoring that particular corporation and those of us who are responsible for this legislation.

Senator HAYDEN: My question, Mr. Minister, was not addressed to that phase of it.

Hon. Mr. GORDON: I was trying to interrupt a little bit.

Senator HAYDEN: Yes, and I am difficult to—

Hon. Mr. GORDON: —to interrupt?

Senator HAYDEN: Yes. My question was directed to show that under this section to which I have referred—that is, section 61A—it is a very flexible section and, as you know, I believe in the greatest flexibility possible in legislation. I say that under section 61A you would have flexibility, but the terms and conditions could prescribe such things as the price, the value for any borrowing base, and all those things could be done, but at least it would be flexible. Whereas when you come into the new section 68(3) it is completely inflexible because you have a statutory formula for borrowing.

Hon. Mr. GORDON: That is right.

Senator HAYDEN: I would like to get your viewpoint as to why you want both of them.

Hon. Mr. GORDON: Perhaps there was so much discussion on this that we felt the more protection the Government had in this matter the better. I do not know. This was the conclusion we came to if there was going to be any relationship at all between loan and trust companies, then we thought this kind of restriction, if you want to call it that, or this method of computing the base on which the borrowing could take place was necessary. There are those who do not agree with this, and I think you are one of them. In fact, you were one of them until yesterday or the day before, and I presume you still are.

Senator HAYDEN: If you want any assurance, I am still in that category, yes. However, what I am pointing out is that under section 61A you have all the authority.

Hon. Mr. GORDON: Yes, that's right. And under section 68 in this particular matter it is spelled out in concrete terms.

Senator HAYDEN: You have made a statutory formula instead of leaving it for terms and conditions to be prescribed.

Hon. Mr. GORDON: That's right. This was such an important matter we felt there should not be any questions left; that it should be clear and definite so that everybody would know where he stands even before Treasury Board dealt with it.

Senator HAYDEN: But under 61A a loan company cannot buy one share of a trust company unless the Superintendent of Insurance recommends it and the Treasury Board approves. It is with your approval that they may embark upon the purchase of any shares.

Hon. Mr. GORDON: Yes. But if they do they come under section 68.

Senator HAYDEN: At various times you have stated and the superintendent has stated in the record of the proceedings in the House of Commons committee that the purpose of section 68, subsection (3), was to prevent the use of the same assets twice for borrowing. That is only true to the limit of the book value of the shares.

Hon. Mr. GORDON: Yes.

Senator HAYDEN: Let us put something else in contradistinction to that. Supposing that some sort of a loan company invested in International Nickel up to the limit permitted, of 30 per cent, and the book value was \$22.98 as at the 1st of March, and the market value at that date was \$87.87. So far as International Nickel was concerned, the loan company could include that in its borrowing base, such shares at the market price. However, when it comes to trust company shares, the legislation reverts to book value. Why the difference?

Hon. Mr. GORDON: But they would not be in a position to buy more than so many shares of International Nickel. There is a wide and broad market, and the investment would be limited. The investment could be realized upon very easily. If you were investing in a trust company, the market might or might not be as broad. It might be a narrower market, a more controlled market, and there would not be the same restriction on the percentage of shares of the trust company that you could acquire. The two things, to my way of thinking, are quite dissimilar.

Senator HAYDEN: That is one of our points of difference.

The ACTING CHAIRMAN: Mr. Gordon tells me he has to go to a cabinet meeting in 15 minutes.

Senator HAYDEN: I shall not take that long. All I want is to get this viewpoint before the committee.

Hon. Mr. GORDON: As far as my viewpoint is concerned, it seems to me that if you are valuing a minority investment in some marketable security like International Nickel it is quite different from an investment in a subsidiary trust company.

Senator HAYDEN: But what you are doing in this section is starting at 11 per cent and until you get higher than 50 per cent it is a minority interest.

Hon. Mr. GORDON: But you have to start somewhere. I don't think I am going to convince you on this.

Senator HAYDEN: I should say I have failed hopelessly so far to make a dent in your armour.

Senator McCUTCHEON: Let us say this: Senator Hayden did convince a majority of this committee some time ago on this point. However these various restrictions such as Senator Hayden has been discussing are going to result in anomalies in the business. They don't apply to certain large trust companies—

Hon. Mr. GORDON: —that don't come within federal jurisdiction.

Senator McCUTCHEON: The two largest trust companies—this bill won't apply to them at all.

Hon. Mr. GORDON: If I remember correctly the Royal Commission on Banking and Finance had something to say about that.

Senator McCUTCHEON: Does the minister see a trend toward the incorporation of more provincial companies? There seems to be a spate of provincial life companies being incorporated rather than coming now to Ottawa.

Hon. Mr. GORDON: I would not like to prophesy.

Senator WALKER: I am interested in this from the point of view of having been a minister in the other house. I am interested in this question of direct mortgages and conventional mortgages up to 75 per cent. I think it is a good thing. When I was minister we strove for years to get something like this going. However, it seems odd to me that you should restrict to 11 per cent the mortgage companies and trust companies, when you have now 100 per cent no restriction at all as far as, say, Interprovincial Nickel is concerned.

Hon. Mr. GORDON: We would not permit a loan company to acquire 100 per cent International Nickel.

Senator WALKER: Well, 50 per cent.

Senator HAYDEN: Thirty per cent.

Senator WALKER: Why should there be this restriction? Is it not in the public interest to have as many conventional mortgages as possible?

Hon. Mr. GORDON: Well, Senator Walker, you cannot narrow this down in the way you have done, in my opinion. My view is that if there is a relationship between these two types of financial institutions, a relationship which one body of opinion is opposed to, then there should be a fairly tight set of rules or measuring sticks under which their borrowing limitations are controlled. Otherwise, as I said on other occasions, you could find yourself in a position where it was pyramiding—you would have one set of assets over another. If you want to stop that, and I take it everybody would want to avoid it—nobody would want to face the situation that arose in the twenties when there was a lot of this and it ended up in the collapse of important institutions—if you want to stop that, you have to make up your mind where to stop it. Like anything else you can stop it here, or a little further on, or still further along. It was considered that this was the place to stop it. Now in the opinion of some people this is going too far, and that instead of stopping it at the point where it was a 10 per cent interest, it should be when there was a 20, or 30, or 40 per cent interest—whatever percentage you like. I think it is a matter of opinion.

Senator WALKER: I appreciate that.

Hon. Mr. GORDON: I would also remind you that there are other institutions in that general field like RoyNat or Kinross which have been on one basis, and which have been very successful and they have lent a lot of money. My hope is that The World Mortgage Corporation will start on exactly the same basis as RoyNat and Kinross, and it seems to me that they should have every opportunity of being successful.

Senator WALKER: Is there any reason why under the circumstances it could not be 30 per cent rather than 11 per cent?

Hon. Mr. GORDON: I suppose you could ask: Is there any reason why it should not be 49 per cent?

Senator WALKER: But you must have some reason. We will not talk about percentages. Is this directed against World Mortgage Corporation?

Hon. Mr. GORDON: No, there were other companies—if we are going to talk about the World Mortgage situation I will say that there were two other companies, as you have heard, that were affected by these proposals that had, under earlier legislation, certain advantages over the generality of companies in this field. The two were Huron & Erie and Canada Permanent. They had certain advantages, and the great trouble was that because two companies had certain advantages there was pressure to let new companies have the same

advantages. It seemed to me, as a member of the Government, that once you start legislating for individual companies you get yourself into trouble. Under this bill everybody will be treated in the same way including Huron & Erie and Canada Permanent.

The advantages which these two companies previously enjoyed compared with other companies in this field have now been taken away from them under this legislation. This is very fine, but at the same time the loaning ratios were raised from 12½ per cent to 15 per cent, so that there was no particular hardship done to them. As with a tariff preference, if you take away the preference somebody thinks that potentially some advantage is being taken away. As things are, everybody will be on the same basis, and nobody will have any advantage over anybody else. I think that in itself is an improvement.

Now, when this bill comes up for revision again—I was going to say next year, but perhaps it will be two years from now, or whenever it can be done—I am perfectly prepared to discuss this matter again and see how it has worked out. But, I really think that having got these two companies, Huron & Erie and Canada Permanent, on the same basis as everybody else we are in a position to legislate with respect to every company in this field, and everybody will be treated alike. It seems to me that will eliminate the sources of difficulty that have been present in the past.

Senator WALKER: But on my broad premise, you are in favour of as many conventional loans as possible, are you not—mortgage loans?

Hon. Mr. GORDON: Provided the interest rate is low enough.

Senator WALKER: Well, that will take care of itself with Central Mortgage in the picture.

Hon. Mr. GORDON: Yes, with Central Mortgage in the picture it will.

Senator WALKER: Thank you very much.

The ACTING CHAIRMAN: Are there any other questions? Shall these sections carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the bill carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Thank you very much, Mr. Gordon.

Hon. Mr. GORDON: Thank you, Mr. Chairman, and thank you very much, gentlemen.

The committee adjourned.



Second Session—Twenty-Sixth Parliament
1964-65

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the Bill C-35, intituled:
"An Act to amend the Criminal Code (*Habeas Corpus*)".

The Honourable SALTER A. HAYDEN, *Chairman*

TUESDAY, MARCH 23, 1965

No. 2

WITNESS:

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, July 20, 1964:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Baird, for second reading of the Bill C-35, intituled: "An Act to amend the Criminal Code. (*Habeas Corpus*)".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, March 23, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.30 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Beaubien (*Provencher*), Blois, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Davies, Dessureault, Fergusson, Gershaw, Gouin, Hugessen, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), McLean, Pearson, Pouliot, Reid, Roebuck, Thorvaldson, Walker, White, Willis and Woodrow. 32.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill C-35, An Act to amend the Criminal Code (*Habeas Corpus*), was further considered.

The following witness was heard: Mr. T. D. MacDonald, Assistant Deputy Minister of Justice.

On motion of the Honourable Senator Croll it was Resolved to report the Bill with the following amendment:

Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of section 691 of the *Criminal Code* is repealed and the following subsections substituted therefor:

'(2) Except as hereinafter in this section provided, the provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section.

(3) Where an application for a writ of *habeas corpus ad subjiciendum* is refused by a judge of a court having jurisdiction therein, no application may again be made on the same grounds whether to the same or to another court or judge, unless fresh evidence is adduced, but an appeal from such refusal shall lie to the Court of Appeal, and where on such appeal the application is refused a further appeal shall lie to the Supreme Court of Canada.

(4) Where a writ of *habeas corpus ad subjiciendum* is granted by any judge no appeal therefrom shall lie at the instance of any party including the Attorney General of the province concerned or the Attorney General of Canada.

(5) Where a judgment is issued on the return of a writ of *habeas corpus ad subjiciendum*, an appeal therefrom lies to the Court of Appeal, and from a judgment of the Court of Appeal to the Supreme Court of Canada, with the leave of that court, at the instance of the applicant or the Attorney General of the province concerned or the Attorney General of Canada, but not at the instance of any other party.

(6) An appeal in *habeas corpus* matters shall be heard by the court to which the appeal is directed at an early date, whether in or out of the prescribed sessions of the court."

At 10:00 p.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, March 23, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-35, intituled: "An Act to amend the Criminal Code (*Habeas Corpus*)", has in obedience to the Order of reference of July 20th, 1964, examined the said Bill and now reports the same with the following amendment:

Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of section 691 of the *Criminal Code* is repealed and the following subsections substituted therefor:

'(2) Except as hereinafter in this section provided, the provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section.

(3) Where an application for a writ of *habeas corpus ad subjiciendum* is refused by a judge of a court having jurisdiction therein, no application may again be made on the same grounds whether to the same or to another court or judge, unless fresh evidence is adduced, but an appeal from such refusal shall lie to the Court of Appeal, and where on such appeal the application is refused a further appeal shall lie to the Supreme Court of Canada.

(4) Where a writ of *habeas corpus ad subjiciendum* is granted by any judge no appeal therefrom shall lie at the instance of any party including the Attorney General of the province concerned or the Attorney General of Canada.

(5) Where a judgment is issued on the return of a writ of *habeas corpus ad subjiciendum*, an appeal therefrom lies to the Court of Appeal, and from a judgment of the Court of Appeal to the Supreme Court of Canada, with the leave of that court, at the instance of the applicant or the Attorney General of the province concerned or the Attorney General of Canada, but not at the instance of any other party.

(6) An appeal in *habeas corpus* matters shall be heard by the court to which the appeal is directed at an early date, whether in or out of the prescribed sessions of the court.' "

All of which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 23, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-35, to amend the Criminal Code (*Habeas Corpus*), met this day at 8.30 p.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The CHAIRMAN: We have a quorum. I call the meeting to order.

We have before us Bill C-35, the last meeting on which was held on October 14, 1964. There have been discussions since then and I think progress has been made in preparing a draft that would meet all viewpoints. May I make a brief summary to start, and then I shall call upon Senator Roebuck.

The plan of this writ of *habeas corpus* is briefly this: that instead of permitting a lawyer on behalf of a person who is in custody shopping around among various judges until he may find one who may grant a writ of *habeas corpus*, the proposal here is that when a counsel applies to a judge for a writ of *habeas corpus*, and all that means is "bring the body before me some day and we will inquire into the detention"—if the judge turns down the application, then the person detained or in custody has the right to appeal from that decision. If the judge grants the writ or directs the writ to issue, then the issue will proceed and at that stage the Crown would have no right of appeal. The next step would be the fixing of a day for a hearing, and the body is brought before the judge and the hearing takes place on the merits, and the judge decides whether the man is properly and legally detained or not. If he decides he is not legally detained, he makes an order discharging him from custody. If he decides he is legally detained he refuses the application. At that stage this bill would provide that the person affected by the order would have a right of appeal to the court of appeal for the appropriate province.

The next question is as to what right of appeal there should be from the decision of the court of appeal to the Supreme Court of Canada, and I think the consensus now would appear to be that the interests of justice would best be served if appeal to the Supreme Court of Canada were only with leave. That is the outline. Now, Senator Roebuck, you have something you want to say.

Senator ROEBUCK: Yes, but I shall not be long. I give that assurance because I spent quite an amount of time on this bill on another occasion. I may say I have had many discussions with the people particularly interested in this measure in the considerable time that has elapsed since it was introduced and since I analysed it at some length in the chamber, and I think I have concurrence—but each man can speak for himself—first from my friend on my left who was the sponsor of the bill (Senator Lang). Mr. Hopkins, our counsel, says he will buy it in the manner in which it is proposed to amend it. John Matheson introduced this bill in the Commons, and although we may change the wording somewhat and its application to some extent, the real credit goes to him for having initiated this matter, and when we make a change, I want it clearly understood that I for one have no criticism of John Matheson. I give him all credit for the initiative he has shown in the introduction of this bill in the first instance.

The bill itself is very short. It gives an appeal under all circumstances, an appeal which lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari*, prohibition or *habeas corpus*. That is to say there is a right of appeal given in that bill to an application for writ of *habeas corpus* as well as the judgment which may be given after the return of the writ.

I pointed out in the Senate, and I am going to read just a short paragraph from what I said:

This bill as it now reads would confer a right of appeal in applications for writs of *habeas corpus* upon the Crown, represented as he may be by the Attorney-General or one of his representatives, upon any one detaining or having custody of another person, as well as upon the applicant for the writ. In my opinion, if any judge is convinced that someone in detention should be brought before the court in order that his jailer, custodian or captor be required to justify his actions, that, in my opinion, should be final.

The possible victim should be produced forthwith and immediately, or at such time as the court may direct or order. There should be no right of appeal to prevent or delay prompt inquiry into the legality of his detention. There is no virtue in appeals against the issue of the writ. Immediately and forthwith, let those in authority state their right, if right does exist, by which they abridge the liberty of the subject.

I think I have the agreement of everybody here on that point. Once a judge rules that a man should be brought before the court to determine whether he is properly detained, then those who are detaining him should turn up and say why, and if they have not the right to detain him then the man should be freed. Reading again:

It is quite another matter when the writ is refused to an applicant who claims to be the victim of illegal detention,—

There should surely be appeal available to an applicant to whom the writ is refused, but to no one other than the applicant; certainly not to those called before the court to account for some arbitrary detention of another person. I think we should always have had that appeal, and we should certainly have it now, since shopping from court to court has been abolished, I think, by the *obiter* statement of Chief Justice McRuer.

The judgment on the return of the writ is, again, quite a different matter.

I can think of circumstances in which the freeing of someone in custody might be attended by serious consequences.

In order to carry that out I have an amendment to propose to the bill as it is now before us, but in passing may I just say that this is not a new proposal to some of us sitting around this table. Honourable senators will remember that in 1951-52 the Criminal Code was revised, and it came to us for our endorsement. A special committee was appointed, and we gave the matter study for two sessions. In the proposal that came to us from the House of Commons was a suggestion quite similar to the one in this bill; that is to say, that the Crown or anybody affected by a writ should have an appeal. The chairman and I conferred upon it at that time, and we struck that out because at that time shopping from judge to judge was a well-known established practice. Since then, as the chairman has just told us, Chief Justice McRuer has ruled—in an *obiter* statement, it is true, but nevertheless he did rule—that it was not proper to shop from judge to judge, and from court to court.

We are now in a different position. We do need an appeal now, but we do not need an appeal against the issue of the writ. So, honourable senators, I am moving the following amendment to Bill C35:

Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of Section 691 of the Criminal Code is repealed and the following subsections substituted therefor:

'(2) Except as hereinafter in this section provided, the provisions of part XVIII apply, *mutatis mutandis*, to appeals under this section.

There is nothing new in that.

(3) Where an application for a writ of *habeas corpus ad subjiciendum* is refused by a judge of a court having jurisdiction therein, no application may again be made on the same grounds whether to the same or to another court or judge, unless fresh evidence is adduced, but an appeal from such refusal shall lie to the Court of Appeal, and where on such appeal the application is refused a further appeal shall lie to the Supreme Court of Canada.

I wish to add there the words "with leave".

The CHAIRMAN: Wait a minute. You mean, on the original application for the writ.

Senator ROEBUCK: "Supreme Court of Canada".

The CHAIRMAN: In relation to the original application for the writ, as distinct from the decision on the merits?

Senator ROEBUCK: It is on the merits chiefly that I would like to proceed.

The CHAIRMAN: This paragraph (3) deals with appeals from a decision where the writ will issue in the first instance.

Senator LEONARD: I think you ought to leave that alone.

Senator ROEBUCK: Very well. There you have abolished in the law the shopping from judge to judge. I think we are all agreed on that. Then we give an appeal, against a refusal of the writ, to the applicant and to the applicant only:

(4) Where a writ of *habeas corpus ad subjiciendum* is granted by any judge no appeal therefrom shall lie at the instance of any party including the Crown.

(5) Where a judgment is issued on the return of a writ of *habeas corpus ad subjiciendum*, an appeal therefrom lies to the Court of Appeal, and from a judgment of the Court of Appeal to the Supreme Court of Canada, at the instance of the applicant but not at the instance of any other party with the exception of the Crown.

The CHAIRMAN: This is where you wish to add those words "with leave".

Senator ROEBUCK: This is where I want to add the words "with leave". That is a suggestion made by Mr. MacDonald, the Assistant Deputy Minister of Justice, in a conversation with me only this afternoon. He thought it would be better to make the application "by leave," rather than as a right.

The CHAIRMAN: Where would you insert the words "with leave" in paragraph (5)?

Senator ROEBUCK: In the fourth line, after the words "Court of Appeal", so that it would read:

Court of Appeal, with leave, to the Supreme Court of Canada.

Really, the difference is not great.

The CHAIRMAN: I think it would come in after the words "of the Supreme Court of Canada"—"with leave of that court".

Senator ROEBUCK: That is more explicit. I am satisfied with that.

It comes at the instance of the applicant but not at the instance of any other party, with the exception of the Crown.

There were quite a number of us who were at one time, if not now, opposed to any appeal by the Crown—and this is a compromise. It does not allow the person to whom the writ was directed—the Superintendent of Prisons, for instance, or some person who is detaining another without right—to delay matters by an appeal. Yet he is not entirely shut off; he may go to the Attorney General and he may have an appeal. In that case, of course, with the Attorney General involved and in command, probably a leading counsel would be engaged and you would not have any finagling. There would be no danger and the matter could proceed rapidly. But it would cut out all frivolous or spiteful appeals, or attempts merely to delay the course of justice—by giving the appeal to the Crown and to no one else.

The CHAIRMAN: Now, your paragraph (6) is important.

Senator HUGESSEN: Before you leave paragraph (5) is there not some double phrasing there? Why do you not say “at the instance of the Crown but not at the instance of any other party”?

Senator ROEBUCK: Because we are making such a distinction there, between the Crown and other parties. The Crown represents a party, the Superintendent of Prisons may be a party, and I want it understood quite clearly that the Superintendent has no right of appeal without the concurrence of the Attorney General.

Senator HUGESSEN: I do not like the double negative in this phrase. Would you say: “At the instance of the applicant or of the Crown, but not at the instance of any other party”?

The CHAIRMAN: That would be a happier phrasing.

Senator ROEBUCK: Very well. I would agree to that. That is only a change in the phrasing.

The CHAIRMAN: “At the instance of the applicant or of the Crown”.

Senator ROEBUCK: “But not at the instance of any other party”. I want it distinctly understood that Tom, Dick or Harry is not in a position to levy these proceedings.

Senator HUGESSEN: That is all right.

Senator ROEBUCK: The next paragraph is:

(6) An appeal in *habeas corpus* matters shall be heard by the court to which the appeal is directed at an early date, whether in or out of the prescribed sessions of the court.

I picked that phrase out of the Supreme Court Act. It is in the Supreme Court Act, which is a very well considered act and long established. You will find a clause there that where the liberty of the subject is involved, holiday seasons do not count. The court shall sit, irrespective of whether it is in the holiday season or outside it.

Honourable senators, that is my motion. I could speak for a long time but I do not think it is necessary. Besides that, we have had so many conferences here and so many honourable senators around this table have concurred in my proposal, that I think I will leave it at that.

The CHAIRMAN: Mr. MacDonald the Assistant Deputy Minister is here, and I think we should hear from him. Do you want to say something, Senator, before he speaks?

Senator MACDONALD (*Cape Breton*): Mr. Chairman, since I had something to say about this in the Senate at the time, I want to say now that I would go along with the amendment and favour it, while at the same time saying I am

not wholly convinced that the Crown should have an appeal in any case. I have been impressed by the argument put forward by Senator Roebuck to-night, and by other conversations with him, so I do think this is a reasonable compromise between those who feel there should be no appeal and those who feel otherwise.

The CHAIRMAN: It is a compromise as far as I am concerned, senator, because I was basically opposed to giving the Crown any right of appeal.

Senator MACDONALD (Cape Breton): So was I.

Senator CHOQUETTE: I would like the sponsor of the amendment to tell me where *subjiciendum* comes from, because we have *subjudicie* and we might also have *subjudiciendum*. Where does "*subjiciendum*" come from?

Senator ROEBUCK: It is not French, it is Latin. While I cannot give you a derivation of the word at all, it is a thoroughly established, very old terminology, and it is used in the Supreme Court of Canada.

The CHAIRMAN: Yes, it is in the Supreme Court of Canada Act.

Senator ROEBUCK: In ancient law there was no appeal.

The CHAIRMAN: Senator, could I say something on the question of where that word *subjiciendum* comes from? In the Administration of Justice Act, 1960, in England, is a definition, at page 1081 of the volume I have before me. Section 17, subsection 2 says:

In this act "application for *habeas corpus* means an application for a writ of *habeas corpus ad subjiciendum*. . . ."

Senator ROEBUCK: I was going to point that out.

The CHAIRMAN: And also in the Supreme Court Act, section 57.

Senator ROEBUCK: There are no fewer than five ancient writs of *habeas corpus*. There was a writ which brought a prisoner from the jail to give testimony; or to be charged anew there was a writ very much like our subpoena. There were two or three others—five in all.

The only way to be sure that you are attacking the right writ beyond all question is to give it its full right, as is done here in this case of the House of Lords, *Secretary of State for Home Affairs v. O'Brien*, and in which Lord Birkenhead said:

We are dealing with a writ antecedent to statute, and throwing its root deep into the genius of our common law. The writ with which we are concerned today was more fully known as *habeas corpus ad subjiciendum*.

Then he goes on to say:

In the course of time certain rules and principles have been evolved: and many of these have been declared so frequently and by such high authority as to become elementary. Perhaps the most important for our present purpose is that which lays it down that if the writ is once directed to issue and discharge is ordered by a competent Court, no appeal lies to any superior Court.

I was very much impressed with that statement. However, as I said in my address of July last to the Senate, I could imagine circumstances where the release of an individual by act of a single judge might be followed by very undesirable circumstances, and it is for that reason I now include in this amendment an appeal to the Crown, but to nobody else, which, as I have said, is a compromise.

The CHAIRMAN: Are you ready to hear Mr. MacDonald?

Senator WALKER: What about the wording of this amendment? I have had a great deal of experience with your technique in these matters, Mr. MacDonald, and I should like to hear from you.

Mr. MACDONALD: Are you referring to the wording of the original bill, Senator Walker?

Senator WALKER: No, I am referring to Senator Roebuck's amendment.

Mr. MACDONALD: Could I come to that later?

Senator WALKER: Yes, of course.

Senator POULIOT: Who is the gentleman who just spoke?

The CHAIRMAN: This is Mr. T. D. MacDonald. He is an Assistant Deputy Minister of Justice. We have had him before us many times in the past.

Senator POULIOT: Mr. MacDonald?

Senator WALKER: Yes; not Mr. Favreau.

Senator POULIOT: And not Mr. Driedger.

Senator ROEBUCK: The Assistant Deputy Minister, for whom we all have the highest respect.

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice: Mr. Chairman, I do not know just where to begin, and I will try to be very brief. This is a private members' bill, of course, and I am here to be of whatever assistance I can to the committee. I think, in view of the general terms of reference that you gave me, Mr. Chairman, in asking me to comment, that perhaps I should direct myself first to the original bill and deal with three points which have arisen in connection with it.

I would like to say that my views on this matter are already well known to Senator Roebuck. We have discussed them at some length.

As to the use of the words "*ad subjiciendum*" I think that is completely correct. I think that is the writ of *habeas corpus* that is envisaged. At the same time I think I should say that the other writs that might be brought into the fold by the use of the mere expression "*habeas corpus*" do not today seem to be of such relevance that in practice any case would likely be swept into the ambit of the section that was not intended. For example, the Criminal Code itself employs simply the expression "*habeas corpus*". It is equally true that the Supreme Court Act uses the words "*habeas corpus ad subjiciendum*" and so does the Administration of Justice Act of the United Kingdom. On the other hand, until some time ago, the Nova Scotia act used only the expression "*habeas corpus*", and that was also true in the case of at least one other province. So while the expression "*habeas corpus ad subjiciendum*"—

Senator CHOQUETTE: You say it like I do, "*subjiciendum*". I would like to know what is the abbreviation. You are still pronouncing it "*habeas corpus ad subjiciendum*" and that is the way I say it. I am embarrassed with my old Latin.

The CHAIRMAN: It is "*subjiciendum*".

Mr. MACDONALD: "*Subjiciendum*". My whole point on that is that while the correct expression, I believe, is *habeas corpus ad subjiciendum*, it does not appear to me that the use of the simple expression "*habeas corpus*" at this particular time brings into the ambit of the section anything that was not intended to be included.

The second point I should mention is the point about giving the Crown an appeal against the mere issue of a writ as contrasted with the order for the discharge of the prisoner. I am not sure the bill in its present form does give

the Crown such right of appeal, because the section in which the words "*habeas corpus*" have been inserted now reads:

An appeal lies to the court of appeal from a decision granting or refusing the relief sought, in proceedings

—and I will abbreviate it—

by way of ... *habeas corpus*.

It scarcely seems to me the mere issue of the writ, a procedural step, is the granting of the relief sought, because the relief sought is the release of the prisoner.

The CHAIRMAN: Is that right? In the first instance, I thought the relief sought was to deliver the body before a judge.

Mr. MACDONALD: Well, I suppose that this remains a matter of opinion, Mr. Chairman. But I should think, with all respect, that the relief sought in the proceedings is actually the discharge from custody of the prisoner.

The CHAIRMAN: There are two stages in the proceedings; the first is an order to deliver the body so that the merits of the detention may be inquired into, and the second stage is the hearing on the merits.

Senator ROEBUCK: The application for the writ does not affect the discharge of the prisoner, only that he be produced in court.

Mr. MACDONALD: I should put myself on record by saying that to me the relief sought is really the discharge of the prisoner, and it is at least questionable that the mere issue of a writ, directed to the jailer or the custodian to bring the man in custody before a judge so that the question of his detention may be inquired into, is in itself a granting of the relief sought, and if it is not a granting of the relief sought, the Crown would have no appeal under the present bill against the mere issue of the writ.

The third point that I should mention in connection with the present bill is that section 41 of the Supreme Court Act, and perhaps I might read it since it is quite short, says:

41. (1) Subject to subsection (3) and to section 44, an appeal lies to the Supreme Court with leave of that court from any final or other judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court—

And subsection (3) simply says:

(3) No appeal to the Supreme Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.

It seems to me that the result of the *habeas corpus* application, where successful, is simply to discharge the prisoner from custody, and *habeas corpus* does not in itself deal with conviction or acquittal, and does not quash a conviction or acquittal. It appears to me there is likely an appeal to the Supreme Court of Canada in these cases under section 41 of the Supreme Court Act. One cannot be absolutely categorical about that, but on reading the section that is what it would seem to indicate.

Senator ROEBUCK: Does not the Supreme Court Act say there should be no appeal in criminal procedures?

Mr. MACDONALD: Not quite. Section 40 says no appeal lies to the Supreme Court lies under section 36, 38 or 39 from a judgment in a criminal

cause, or in proceedings for or upon a writ of *habeas corpus* arising out of a criminal charge, etc. But the section I am referring to is not 36, 38 or 39. It is 41.

The CHAIRMAN: If there is any likelihood of confusion or a possibility of an interpretation that would be against what we are seeking to accomplish, then we should spell it out in this amendment.

Senator ROEBUCK: Quite so.

Mr. MACDONALD: Those are the three points which I thought it would be useful to the committee to mention in connection with the present bill. Now, as for the wording of the draft amendment, if you wish me to I will—

Senator WALKER: Have you been over it?

Mr. MACDONALD: Yes, I have seen it, and have looked at it quite carefully.

Senator WALKER: Are you in favour of it? We know what it purports to do. Are you satisfied with the wording of it?

Mr. MACDONALD: Could I answer you in this way, Senator Walker: I took the same ideas and I incorporated them in an alternative draft which was prepared only late today. I did not have an opportunity to hand Senator Roebuck a copy until I came here tonight. However, I have it here available for the assistance of the committee if the committee wishes to have it.

Senator ROEBUCK: I saw it for the first time a few minutes ago.

Mr. MACDONALD: There are one or two points of detail that I would like to mention, irrespective of the alternative, in the draft that has been moved.

The CHAIRMAN: Would you address yourself to those?

Mr. MACDONALD: Yes, Mr. Chairman. The first occurs in the first line of subsection (3). Perhaps I should say, in fairness to Senator Roebuck and to preserve my very good relations with him, that I did not have a chance to mention all these points to him. It refers to an application for a writ. It is when an application for a writ is refused that the applicant is not permitted to shop around. It seems to me that that should extend to more than the mere application for the writ being refused; that the intention is that the applicant cannot shop around either if the writ is refused in the first instance, or even if on the return of the writ he is refused discharge from custody. In other words, the words "application for a writ" cover only one of the situations envisaged.

The CHAIRMAN: On that point it would appear to me that subsection (5) deals with the situation on the return of the writ where a judgment is issued, and then it provides for an appeal therefrom.

Senator POULIOT: Now, Mr. Chairman, I have the book. I have gone to the *Encyclopedia Britannica* in which matters of *habeas corpus ad subjiciendum* are referred to, and if you will permit me I will read you a paragraph which concerns *habeas corpus ad subjiciendum*:

The *habeas corpus ad subjiciendum* was sometimes used in cases of illegal detention in private custody. In 1758 questions arose as to its application to persons in naval or military custody, including pressed men, which led to the introduction of a bill in parliament and to the consultation by the House of Lords of the judges. (See Wilmot's *Opinions*, p. 77.) In the same year the writ was used to release the wife of Earl Ferres from his custody and maltreatment. But perhaps the most interesting instance of that period is the case of the negro Somerset (1771), who was released from a claim to hold him as a slave in England.

My point is that a writ of *habeas corpus ad subjiciendum* is something of a restrictive nature, and when I speak of *habeas corpus* I mean *habeas corpus*, period. The "*ad subjiciendum*" has no reason to be there, even if it was employed in the case of a negro in England 200 years ago.

I am glad that the sponsor of this bill in the House of Commons is present at this meeting of the committee tonight. He is the Member for Leeds, and is highly respected. He took it upon himself to sponsor this legislation in the House of Commons, and he is to be congratulated for that. But, his bill is complete. The only difference is that the amendment is of a restrictive nature. It applies only to *habeas corpus ad subjiendum*, and besides that it creates two appeals instead of one. There is a supplementary appeal to the Supreme Court of Canada, and there is no shopping around. There must be new evidence laid in order to have an appeal. I find that the provisions of the bill are more complete than the amendment can be, and the amendment would tend only to embarrass the judges in respect to approving the release of a man on a writ of *habeas corpus*. I am strong for writs of *habeas corpus*, *mandamus*, *quo warranto*, and *habeas corpus*—all those writs that date back to Magna Carta. We shall not try to split hairs about it. We should speak of *habeas corpus* as *habeas corpus* itself, with no distinction at all.

This is why I am strongly opposed to the amendment—and this has no relation to the sponsor—and I am for the bill itself.

Senator CROLL: May I just ask this question? Mr. MacDonald read the Supreme Court Act, which I have not seen, and that spoke of "*habeas corpus*". Then, why do we limit our *habeas corpus* in this fashion? There is more than one *habeas corpus* proceeding. Why are we limiting it? Does this cover every conceivable *habeas corpus* proceeding?

Senator WALKER: That is a good question, because there is *habeas corpus ad testificandum*.

The CHAIRMAN: The limitation in *habeas corpus* you find in the English statute; you also find it in the Supreme Court Act of Canada.

Senator ROEBUCK: And in the recent statute of 1960, the English statute, it says that when *habeas corpus* is referred to what is meant is *habeas corpus ad subjiendum*.

The CHAIRMAN: Mr. MacDonald, the question was addressed to you and I should not have attempted to answer it.

Senator LEONARD: Is there not *habeas corpus ad testificandum*, which is not intended to be covered by this bill? That is only bringing a witness to testify. This is excluding *habeas corpus ad testificandum*, that is why the words *habeas corpus ad subjiendum* are used. Is that right?

Senator ROEBUCK: That is right.

Senator CROLL: We could not get any better legal advice than we have got, but I would like to hear Mr. MacDonald speak for a moment.

The CHAIRMAN: I have invited Mr. MacDonald to answer your question.

Mr. MACDONALD: Senator Croll, there are a number of additional writs, as Senator Roebuck has pointed out, and as has been pointed out otherwise. I think that the use of the words *habeas corpus* alone does sweep in these other writs which were not strictly intended to be swept in. However, it would also appear that these other writs have today largely lost their use.

There is *habeas corpus ad testificandum*, for example. The object of this writ is to enable a person who is in legal custody in prison to be brought up before a court for the purpose of giving evidence as a witness. I do not think that is employed for that purpose today. I think you will find provisions in relevant statutes for bringing a witness out of prison to give evidence.

Then there is *habeas corpus ad deliberandum* and *recipias*. The object of this writ is to enable the removal of a person from one custody to another for the purpose of his trial. This again is usually covered by provisions in the code or in the relevant act.

Then there is a writ known as *habeas corpus*—*recipias corpus*. That has been used in one case, which was the only case I could find in the time at my disposal, indicating the use of it. I found that case, because I remembered it from my practice in Nova Scotia. The writ was used back in the 1930s to bring back for re-election to summary trial a number of persons who had gone for jury trial. I think that covers them.

Senator ROEBUCK: We certainly do not want to give appeals into all those matters.

The CHAIRMAN: So, in your view, it is in order and does not confuse, to give this particular description of *habeas corpus* that this amendment is intended to deal with.

Mr. MACDONALD: "*Ad subjiendum*"?

The CHAIRMAN: Yes?

Mr. MACDONALD: No. My viewpoint is that this is strictly the correct wording. My only question is whether the other things that have been swept in, inadvertently if you like, are of great significance. I point out that the Criminal Code throughout merely refers to "*habeas corpus*".

The CHAIRMAN: That is your answer, Senator Croll. Are there any other matters you want to speak on?

Mr. MACDONALD: I would like to make one or two further comments, if I may, on the draft amendment. I am not sure that I have made my point in connection with subsection (3), so if you will bear with me I will make it again.

Subsection (3) provides, in short, that you cannot shop around where the application for the writ is refused. My suggestion is that the intention is that you cannot shop around either, where the writ is issued but the discharge is refused upon the return of the writ.

The CHAIRMAN: Is that not covered in paragraph 5?

Mr. MACDONALD: No, with respect, Mr. Chairman, subsection (5) merely deals with the right of appeal, and not with the question of shopping around.

The CHAIRMAN: Then what you are saying in effect is that if on return of the writ, and there is a trial on the merits, and the judge rules against the prisoner, there is a decision of a court ruling that the prisoner is properly detained—in the face of that, are you suggesting there is the possibility in this draft that counsel for such a person at that time could go back to another judge and shop around at the stage of a hearing on the merits? I do not think it is possible under this wording.

Mr. MACDONALD: I may be under a misapprehension there, Mr. Chairman, but I thought that that was the very issue, because it is my impression that shopping around is not restricted merely to the case where you do not get the writ, but also applies to the case where you get the writ and have the prisoner up before the court, and the court hears the case on the merits and says, "We refuse to discharge the prisoner."

Senator ROEBUCK: I do not think that was the English practice. Where a judgment is rendered granting a man discharge—this judgment that I have said—that is final, and has been for centuries in England.

Mr. MACDONALD: Yes, but the "decision" in question, Senator Roebuck, with respect, is where this discharge is not ordered. My suggestion is that you apply for your writ, your writ is refused, and under subsection (3) you cannot shop around. Whatever that right was, and it is a bit uncertain at the time, is taken away.

Senator ROEBUCK: But this takes it away.

Mr. MACDONALD: But if you get your writ and you get the man and his jailor before the court, and the court hears the case on the merits, and then

refuses to discharge the prisoner, then my suggestion is that under subsection (3) you can still shop around, and that that was not the intention.

The CHAIRMAN: I do not think you can, because subsection (3) only deals with the procedures to the extent that a writ to deliver the body has been issued. Then you have a hearing on the merits.

Senator LANG: Would that not be *res judicata*, as a second time around? I cannot conceive of going back on a matter adjudicated upon and finally disposed of.

The CHAIRMAN: What is the next point?

Mr. MACDONALD: I do not want to flog the point, Mr. Chairman, but I do want for the purpose of assisting the committee as far as I can, to put my view on the record that shopping around is not restricted merely to the case where you do not get the writ. Shopping around also applies to the case where you do not get your discharge.

Senator POULIOT: You know very well there are many provisions under federal statute and provincial statute which deprive judges of giving the right of *habeas corpus*. It is done by legislation, and it is done during a war, and in many statutes.

Mr. MACDONALD: I did not make any research, Senator Pouliot, in connection with that. I have never had occasion to review that area, so I would not like at the moment, without inquiring, to measure the extent to which *habeas corpus* has been restricted.

Senator POULIOT: I know that it has been, and it is in the statute books, and nobody complains about it.

The CHAIRMAN: What is the next point?

Senator WALKER: Mr. Chairman, I think it is clear, thank you very much. I think subsection (3) is clear, as set out by Senator Roebuck, and I do not think there could be any other alternative. Unless it is refused, there would be no shopping around.

Mr. MACDONALD: If I may address myself to Senator Walker for a minute. My point was that subsection (3) is the section in this bill which is intended, in consideration of the right of appeal which is given, to discontinue the practice of shopping around. My suggestion is that subsection (3) only goes half way: it only prevents shopping around when you are refused the writ. It does not prevent shopping around when you get the writ but are refused the discharge of the prisoner.

The CHAIRMAN: After a hearing on the merits.

Mr. MACDONALD: That is correct.

The CHAIRMAN: The hearing on the merits encompasses a judgment of the court, and if you have that paragraph (5) gives you the right of appeal. You are suggesting that with a judgment of the court against me I could go to another judge and ask him to issue a writ releasing the prisoner. With all respect, I find that difficult to understand.

Senator CROLL: Mr. MacDonald, you have on other occasions been overruled, with deference.

Mr. MACDONALD: Many times.

Senator CROLL: Not too many times.

The CHAIRMAN: Can we move on to the next point? I think we have clearly what your point is.

Mr. MACDONALD: If I may add, Senator Croll, never more pleasantly! My second point relates to words that I feel a bit guilty about, because I believe in a previous discussion I rather led Senator Roebuck into a trap—the words

in subsection (3) "unless fresh evidence is adduced"—as the result of my reading to Senator Roebuck an excerpt from Halsbury. But on reconsideration of that matter this afternoon, Senator Roebuck, it occurs to me that on *habeas corpus* the court does not look at the evidence ordinarily, and that by putting the words in there, an unintended inference is placed that the court is to look at the evidence. The wording would be better if it were restricted to the previous words, "on the same grounds".

The CHAIRMAN: I think that would not take any of the strength out of this.

Senator ROEBUCK: I think I could agree with that. Didn't we get those words from the new English act of 1960 and not Halsbury?

Mr. MACDONALD: What I gave you, Senator Roebuck, was a paraphrase in Halsbury of the English act. It was the paraphrase I gave you.

Senator ROEBUCK: I thought it was taken from the English act, but I am not arguing about it.

Senator LEONARD: Mr. Chairman, may I ask Mr. MacDonald a question? Mr. MacDonald, as I read your amendment, it gives the Crown a right of appeal on the original application on a writ of *habeas corpus*, if the writ is granted. I think that is something on which the committee felt there should not be any right of appeal, and I do not think there is any right of appeal added by Senator Roebuck's amendment.

Mr. MACDONALD: When you speak about my amendment—

Senator LEONARD: The one you have given us tonight.

Senator CROLL: There is one you drew up, and it was passed to me. It was the tentative one.

Mr. MACDONALD: Is this it?

Senator LEONARD: That is it.

Mr. MACDONALD: It is the draft amendment.

The CHAIRMAN: Wait a minute. We are going to get a horrible record when you are talking about this "draft amendment". We have before us officially, and in the record, an amendment proposed by Senator Roebuck. We haven't any other, and when we get reading this record afterwards with this talk about "this amendment" what are we talking about?

Senator POULIOT: I have a copy of the *Encyclopaedia Britannica* and it is the same spelling. I want you to look at that so that we will not make any mistake.

The CHAIRMAN: There is an "ii" instead of "ji". They write it both ways in Latin.

Senator POULIOT: I trust the *Encyclopaedia Britannica*.

The CHAIRMAN: Let us come back to the legal procedure here. In connection with the point Mr. MacDonald has raised about the adoption of the words "unless fresh evidence is adduced", it may well be that the section in paragraph 3 would get along without those words, but Senator Roebuck has good precedent for including them, because the English Administration of Justice Act in 1960, in dealing with this and in limiting the appeal, uses the language "unless fresh evidence is adduced in support of the application" so that the applicant is not going back a second time on the same evidence.

Senator CROLL: Mr. MacDonald being aware of that, as I am sure he is, has some objection to it and he raises it by saying that the judge may feel he must look at the evidence. That is the point he made. But the British have lived with that for some time, have they not?

Mr. MACDONALD: I do not know enough about the English practice and how it may have been extended lately on *habeas corpus* to say that the importing of those words into our act would have no unintended effect.

Senator CROLL: Is it not a fair gamble to take where we are breaking some new ground?

The CHAIRMAN: Reading the whole section as it refers to this language which Senator Roebuck has incorporated in the new act, section 14 of the Administration of Justice Act 1960, subsection (2) says:

No such application shall again be made by or in respect of that person on the same grounds,—

This is the exact language we have in paragraph 3—

—whether to the same court or judge or to any other court or judge, unless fresh evidence is adduced in support of the application;—

So that what we are adopting here, or adapting, whichever way you want to say it, is the language of the English statute in exactly the same kind of situation we are trying to cover here. I would think we have a fairly good precedent.

Senator ROEBUCK: I thought so when I put it in.

Senator HUGESSEN: Mr. Chairman, the whole thing starts with the refusal of a judge of an application. He must have some ground for the refusal. I think the words “unless fresh evidence is adduced” are appropriate if the applicant comes again, because there must be new evidence.

Senator LANG: One does not adduce evidence on an application.

Mr. MACDONALD: Again I do not want to labour this point, but I do want to make it clear that in Canadian practice, generally speaking, on a *habeas corpus* application the court does not retry the case and does not rehear the evidence.

Senator HUGESSEN: Then on what ground does a judge refuse to hear the application?

Mr. MACDONALD: I would say chiefly on questions of law, Senator Hugessen. I am sure the *habeas corpus* is not used as a means of retrying the case on the evidence, and that is why I am afraid of this.

The CHAIRMAN: Is it retrying it on the evidence, or do you have another application made? And if that application discloses the same grounds to support the issue of the writ then it will not be granted, but if that application discloses fresh evidence, or, in other words, it is not on the same grounds, then the judge will entertain the application although he may still refuse it.

Senator ROEBUCK: As I know the practice, when you make an application you support it by affidavit evidence and an argument as well, and the judge makes his decision as to whether he will issue the writ. Although the evidence before him is affidavit evidence it is still evidence adduced; “evidence adduced” is not limited to a man standing in the box.

The CHAIRMAN: No, the producing of affidavits is adducing evidence.

Senator CROLL: Mr. Chairman, we have had a full discussion of this—

The CHAIRMAN: Just one moment, Senator Croll, it may be that Mr. MacDonald has another point to make.

Mr. MACDONALD: I have several.

The CHAIRMAN: Will you proceed?

Mr. MACDONALD: The next point, Mr. Chairman, still touches on subsection (3). I draw the committee's attention to the fact that subsection (3), as does subsection (5), gives an express right of appeal in *habeas corpus*. Section 691(1) of the Criminal Code reads:

An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari* or prohibition.

Appeals lie in those matters under the Supreme Court Act. The question I raise is whether the express giving up of an appeal in this section in respect of *habeas corpus* raises an inference against the appeal in other cases.

Senator ROEBUCK: Is the express appeal stated in the Supreme Court Act?

Mr. MACDONALD: It is not express. *Mandamus*, *certiorari* and prohibition are not expressly mentioned in section 41 of the Supreme Court Act. The appeal exists merely under the general words of section 41.

Senator LEONARD: I think the real purpose of subsection (3) is to give the right of appeal only in the case of the refusal, and that is why it is spelled out specifically.

The CHAIRMAN: That is right.

Senator LEONARD: And that is why it should be spelled out specifically.

Senator WALKER: And it does not deal with the judgment at all.

The CHAIRMAN: No, the judgment comes in the next one.

Senator WALKER: I think the section is clear.

The CHAIRMAN: Is there another point, Mr. MacDonald?

Mr. MACDONALD: Yes, I have two of them.

The CHAIRMAN: Let us have them.

Mr. MACDONALD: They relate to subsections (4) and (5).

The CHAIRMAN: What is your point?

Mr. MACDONALD: The point in connection with subsection (4) is that it appears to me it may cut across the actual practice in *habeas corpus*, because frequently today, I believe, you do not employ two steps. You do not go to the court and get the writ, and then have the writ returned with the prisoner before the court, and then argue the question of the validity of his custody. The whole thing is argued upon the application. In the light of that practice I am not sure what is the effect of talking about the granting of the writ in subsection (4).

The CHAIRMAN: Well, until the writ has been granted under what authority will the jailor deliver a prisoner and bring him before a judge?

Mr. MACDONALD: He is not delivered, Mr. Chairman. It is argued in his absence.

Senator ROEBUCK: It is only by order of the court, according to the Supreme Court Act, that the argument may take place in the absence of the prisoner.

The CHAIRMAN: I am talking about proceedings in the first stage where you apply for a writ. The prisoner is not there at that stage. If the judge refuses the writ the prisoner is not delivered before the judge for hearing on the merits. What is your next point, Mr. MacDonald?

Mr. MACDONALD: The next point is with respect to subsection (5) where it provides that the appeal lies at the instance of the applicant or the Crown, but not at the instance of any other party. My point there is this, that I do not know of any place in the Criminal Code where the words "the Crown" are used. I am not sure exactly what purport it would have there. I am not sure that in practice every case of *habeas corpus*, where you would want to give an appeal, is invariably in the name of the Crown. A writ of *habeas corpus* will ordinarily be directed to the custodian.

The CHAIRMAN: How do you get into a jail without some involvement of the Attorney General, either directly or indirectly, either the Attorney General or some person appearing on his behalf, which is called the Crown?

Mr. MACDONALD: Ordinarily, you do not.

The CHAIRMAN: You do not?

Mr. MACDONALD: But I think it is significant that in subsection (1) of the section, it does not deal in terms of the parties as presently worded. It simply says an appeal lies to the Court of Appeal, leaving the parties to be determined in the ordinary way.

The CHAIRMAN: Would it make any difference to you if, instead of saying "Crown" you said "the Attorney General of the Province"?

Senator WALKER: What term is used? You say the term "Crown" is not used. What then has been used to indicate the same thing?

Mr. MACDONALD: Such an expression, Senator Walker, as "a person convicted on indictment" on the one hand, or "the Attorney General of the Province or the Attorney General of Canada" on the other hand.

Senator WALKER: Would you prefer the insertion of the words "Attorney General of the Province"?

Senator CROLL: You are leaving out the words "Attorney General of Canada".

Senator ROEBUCK: I represented the Crown for a good many years as Attorney General and that was the phrase we used all the time, rightly or wrongly.

The CHAIRMAN: The description of the position, or the authority, is, of course, "the Attorney General in the right of the province or in the right of Canada". Is that the language that you would prefer?

Mr. MACDONALD: Well, my preference, as far as language is concerned, would be the language which is used now in subsection (1). With respect, I do not see the danger of this appeal being asserted, if there is such a case, by somebody who does not answer the description of the Crown.

The CHAIRMAN: That was not my question, Mr. MacDonald. You are addressing yourself to the use of the word "Crown" in subparagraph (5) and you thought that "Crown" was a language not legally descriptive of who may be instituting an appeal. So what I did ask you was whether you would prefer, in place of the word Crown: "at the instance of the Attorney General in the right of the province or at the instance of the Attorney General in the right of Canada". I gathered that your criticism was of the word "Crown" in subparagraph (5).

Senator CONNOLLY (Ottawa West): What words are used in the appeal section of the Code?

Mr. MACDONALD: It is "Attorney General," Senator Connolly.

Senator CONNOLLY (Ottawa West): Without any qualification?

Mr. MACDONALD: By definition, it means "the Attorney General of the province," but in certain sections of the Criminal Code, a concurrent right of appeal is conferred on the Attorney General of Canada as well.

Senator WALKER: You feel it has to be spelled out for both? I want to get your definition.

The CHAIRMAN: In the definition of the Criminal Code, "Attorney General" means the Attorney General or Solicitor General of a province, in proceedings in which this action is taken; and in respect of the Northwest Territories and Yukon Territory, it means the Attorney General of Canada. So, when you use the words "Attorney General," if you use them here in place of "Crown," that is what you would mean.

Senator ROEBUCK: I think that would be sufficient, Mr. Chairman. After all, it is the Attorney General of the Province who has the carriage of the Criminal Code and its administration.

The CHAIRMAN: So, we could put in the place of the word "Crown" the words "Attorney General of the Province".

An hon. SENATOR: Just "Attorney General".

Senator ROEBUCK: I am satisfied.

The CHAIRMAN: Are you satisfied, Mr. MacDonald, with the substitution of the words "Attorney General" for the word "Crown" in (4) and (5)?

Mr. MACDONALD: Well, I am not completely satisfied, Mr. Chairman, that this would let in all the appeals that, it will turn out, should be included.

Senator ROEBUCK: You want the appeal by anybody to whom the writ has been directed, and therefore a party to the proceedings, to have an appeal?

Mr. MACDONALD: I do not want it so much, Senator Roebuck, as that I question what is going to be the effect of departing from the general words that are used in subsection (1) of the section.

The CHAIRMAN: Of course, there does not have to be uniformity as between subsection (1) and the subsection (2) that we are designing.

Mr. MACDONALD: Let me put it this way, Mr. Chairman, that I think the Attorney General of a Province, or the Attorney General of Canada, would be an improvement on "the Crown."

The CHAIRMAN: I would have no objection to your inserting "Attorney General of a Province."

Senator CROLL: But you are leaving out the Attorney General of the Dominion.

The CHAIRMAN: No—both the Attorney General of a Province or the Attorney General of Canada.

Senator CROLL: All right.

Senator ROEBUCK: If the Attorney General of Dominion is included, I have no objection.

The CHAIRMAN: Then, for "Crown" we include the Attorney General of a Province.

Senator WALKER: Or of the Dominion.

The CHAIRMAN: Or of Canada.

Senator ROEBUCK: Would that not give the Attorney General of Manitoba a right to act in the Province of Ontario?

Mr. MACDONALD: Well, I think it should be the Attorney General of the Province.

Senator ROEBUCK: The province, and the province in which proceedings have taken place.

The CHAIRMAN: I think it should be the Attorney General of the province concerned, or the Attorney General of Canada.

Mr. HOPKINS: Yes, I would agree with that.

The CHAIRMAN: Shall we put that amendment in paragraphs 4 and 5, replacing the word "Crown"?

Senator WALKER: Yes.

Senator MACDONALD (Brantford): Mr. Chairman, it is obvious that I have had no practice in connection with *habeas corpus* applications, but I want to ask a question with regard to clause 3. If I apply for a writ of *habeas corpus* and present evidence, and the application is refused, what do I get? Do I get a judgment refusing the application?

The CHAIRMAN: There is an order refusing the application.

Senator MACDONALD (Brantford): What do I get different from what I would receive under (5)?

The CHAIRMAN: Under (5) is a judgment of the court on the merits.

Senator MACDONALD (*Brantford*): Well, the other is a judgment on an application after hearing evidence.

The CHAIRMAN: No. The first application is to have the prisoner before the court, and there is an order for that granting a writ or refusing the writ.

Senator MACDONALD (*Brantford*): All right. Then why do I have more right to appeal from a order than I have to appeal from a judgment?

The CHAIRMAN: You have not, you have the same right.

Senator MACDONALD (*Brantford*): No, under (5) you say I have not a right to shop around, because I have a judgment, but under (3) I have a right to shop around.

The CHAIRMAN: No, you have no right to shop around under (3). That right is taken away.

Senator MACDONALD (*Brantford*): Why did I not have an equal right under (3) under an order as I would have on a judgment?

The CHAIRMAN: Well, under (3) if the judge issues an order directing the writ of *habeas corpus* to issue, I have the order and the prisoner is delivered at the appointed date of hearing, and the hearing takes place on the merits. If the judge refuses the order the prisoner and his counsel on his behalf have a right to appeal that.

Senator MACDONALD (*Brantford*): No, he had a right to shop around.

The CHAIRMAN: No, he has a right to appeal, or if he has fresh evidence he can make another application.

Senator MACDONALD (*Brantford*): No, but under an order of the court, according to this bill, a right is taken away from me to shop around, but under judgment the right is not taken away from me to shop around.

The CHAIRMAN: There is no right under a judgment to shop around.

Senator ROEBUCK: There never was.

Senator MACDONALD (*Brantford*): Well, I cannot see why there would not be an equal right, apart from this bill, to shop around in the case of an order. I may be wrong; I do not know.

The CHAIRMAN: Under this amendment there is no right to shop around, either at the stage of the issue of the writ or at the stage of judgment.

Senator MACDONALD (*Brantford*): It does not say that.

The CHAIRMAN: It certainly does.

Senator MACDONALD (*Brantford*): It does not say that. However, I am asking for information. I am not convinced.

Senator CROLL: I will move the amendments as amended.

Senator LEONARD: These are Senator Roebuck's amendments?

The CHAIRMAN: Yes, with the changes.

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill, as amended?

Hon. SENATORS: Carried.

The committee adjourned.



Second Session—Twenty-Sixth Parliament
1964-1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To which was referred the Bill C-136, intituled: An Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors.

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

WEDNESDAY, MARCH 31, 1965

THURSDAY, APRIL 1, 1965

WITNESSES:

DEPARTMENT OF NATIONAL HEALTH AND WELFARE: The Honourable Judy LaMarsh, Minister; Dr. Joseph Willard, Deputy Minister of Welfare; Mr. J. E. E. Osborne, Director, Research and Statistics Division. DEPARTMENT OF NATIONAL REVENUE: The Honourable E. J. Benson, Minister; Mr. D. Sheppard, Assistant Deputy Minister. DEPARTMENT OF JUSTICE: Mr. D. Thorson, Assistant Deputy Minister. DEPARTMENT OF FINANCE: Mr. Hart D. Clark, Director, Pensions and Social Insurance Division. DEPARTMENT OF INSURANCE: Mr. E. E. Clarke, Chief Actuary.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Hayden	Pouliot
Beaubien (<i>Provencher</i>)	Hugessen	Power
Blois	Irvine	Reid
Bouffard	Isnor	Robertson
Burchill	Kinley	Roebuck
Choquette	Lambert	Smith (<i>Kamloops</i>)
Cook	Lang	Taylor
Crerar	Leonard	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Davies	McCutcheon	Vien
Dessureault	McKeen	Walker
Farris	McLean	White
Fergusson	Molson	Willis
Flynn	Monette	Woodrow—(50).
Gelinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 31st, 1965.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Vaillancourt, for second reading of the Bill C-136, intituled: An Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 31st, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators Aseltine, Beaubien (*Provencher*), Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Gouin, Kinley, Lang, Leonard, Macdonald (*Brantford*), McCutcheon, Molson, Pouliot, Power, Roebuck, Smith (*Kamloops*), Taylor, Vaillancourt and Woodrow—24.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien (*Provencher*) the Honourable Senator Leonard was elected Acting Chairman.

Bill C-136, An Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors, was read and considered.

The following witnesses were heard:

Department of National Health and Welfare: Dr. Joseph Willard, Deputy Minister of Welfare. Mr. J. E. E. Osborne, Director, Research and Statistics Division.

Department of National Revenue: Mr. D. Sheppard, Assistant Deputy Minister.

Department of Justice: Mr. D. Thorson, Assistant Deputy Minister.

Department of Finance: Mr. Hart D. Clark, Director, Pensions and Social Insurance Division.

Department of Insurance: Mr. E. E. Clarke, Chief Actuary.

On Motion of the Honourable Senator Smith (*Kamloops*) it was Resolved that all clauses of the Bill be approved with the exception of the Preamble and Title.

At 9.45 p.m. the Committee adjourned until April 1st at 9.30 a.m.

THURSDAY, April 1st, 1965.

At 9.30 a.m. the Committee resumed consideration of Bill C-136.

Present: The Honourable Senators Leonard (*Acting Chairman*), Beaubien (*Provencher*), Blois, Brooks, Bouffard, Burchill, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Flynn, Gershaw, Gouin, Isnor, Kinley, Macdonald (*Brantford*), McCutcheon, McLean, Molson, Pearson, Roebuck, Smith (*Kamloops*), Taylor, Thorvaldson and Woodrow—25.

The following witnesses were heard:

Department of National Health and Welfare: The Honourable Judy LaMarsh, Minister.

Department of National Revenue: The Honourable E. J. Benson, Minister.

On motion of the Honourable Senator Croll it was Resolved to report the Bill without amendment.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, April 1st, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-136, intituled: "An Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors", has in obedience to the order of reference of March 31, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE EVIDENCE

OTTAWA, Wednesday, March 31, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-136, to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors, met this day at 8 p.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: I see a quorum. I call the meeting to order. We are dealing with Bill C-136.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: We have before us certain witnesses to deal with Bill C-136. The Honourable Judy LaMarsh is not available this evening but I assume we will meet again in the morning, and she will be available at that time.

Dr. Joseph Willard, Deputy Minister of Welfare, is here, together with a number of other officials. Perhaps we could hear from him, and he can introduce the other officials who are with him.

I think at first we might have a word or two as to procedure. This bill has already been before a Joint Committee of the Senate and House of Commons. It is a long bill and is rather complicated. I understood that it took some days to go through it section by section in the joint committee, and I doubt if this committee would want to duplicate that procedure. However, the bill falls into certain groups of sections: the introductory section, the section dealing with contributions, the section dealing with benefits, the section dealing with administration and with the Old Age Security Act. My thought would be that Dr. Willard might open the evidence before the committee, introduce the officials and make such preliminary statements as he wishes. Then perhaps, as far as questioning is concerned, we can deal with these groups of sections and ask questions about them.

Senator CROLL: Mr. Chairman, I think of this in a different light. We have gone over this bill. There are people here who were not on the joint committee but they have heard the debate in the house, and it was a pretty full debate touching on the important parts of the bill. In addition to that there were 22 days of debate in the other place which we could not have missed even if we had wanted to. My thought is that if there are members of the committee who have something on their mind about this legislation, they could ask for such explanation and clarification as is necessary. Let the committee members ask questions, and in that we shall get the information we want rather than information they want to give us. As I have said, there are people here who are not clear about some of the points in the bill.

Senator ASELTINE: We have not all been members of the joint committee.

The ACTING CHAIRMAN: Perhaps I did not explain myself clearly. I suggest we should start by asking Dr. Willard to make such preliminary statements as he feels he should make, and then rather than go through the bill section by section, our consideration should be directed to groups of sections. Certainly this is a time for questioning by the committee. Is it agreed that we ask Dr. Willard to make a statement?

Senator ROEBUCK: I was not on the committee and I would like to hear a general discussion such as you have described.

Dr. Joseph Willard, Deputy Minister of Welfare, Department of National Health and Welfare: Mr. Chairman, honourable senators, I would like to introduce some of the officials with me. On my right is Mr. D. Thorson, Assistant Deputy Minister of the Department of Justice. He has worked on drafting the legislation and he is available to answer any questions concerning the different clauses particularly with regard to the interpretation of the wording of any of the sections.

Next to Mr. Thorson is Mr. D. Sheppard, Assistant Deputy Minister of National Revenue for taxation, who is concerned particularly with the sections of the bill dealing with coverage and contributions which come under the Minister of National Revenue.

On Mr. Sheppard's right is Mr. Osborne, Director of Research and Statistics in the Department of National Health and Welfare, who is concerned with a number of technical aspects of the benefit provisions. He was also the technical adviser to the Joint Committee of the Senate and the House of Commons on the Canada Pension Plan.

In addition, there is Mr. Ted Clarke, the Chief Actuary from the Department of Insurance. We have been dependent upon the Department of Insurance to do the actuarial work in connection with the program. Mr. Clarke had three other actuaries working with him in carrying out this work.

Also present is Mr. J. A. Blais, Director of Old Age Security of the Department of National Health and Welfare, who is particularly concerned with Part IV of the bill which affects the Old Age Security program. He has also been associated with the development of the bill in general, quite apart from Part IV.

Mr. Robert Curran, the legal adviser to the Department of National Health and Welfare, who has worked throughout on the legislation is also present.

Mr. Chairman, I have not any prepared remarks, but perhaps I might be allowed to say a few introductory words. This bill sets out a contributory type of social insurance program. There is nothing new in the approach that is followed. We have endeavoured in developing this legislation to use the experience we have had in Canada with such legislation as the Unemployment Insurance Act. We have also had the benefit of the experience in the United States with respect to their old age survivors' and disability insurance program as well as the experience of the United Kingdom and other countries. This bill does draw on a background of knowledge and experience of similar legislation both in Canada and abroad.

The basic feature of this plan is that it is a graduated benefit. It endeavours to provide different levels of benefit for different people, and to relate the benefit payable to previous earnings over a person's working career. Thus when it comes time for contributors to retire they will get a benefit that in some measure is related to their earnings pattern during the working years. It is a benefit that will be superimposed, as it were, on the universal flat rate old age security benefit. An effort has been made to arrive at levels of benefit when these two are combined that will provide a reasonable level of old age income security.

In addition to that, following the amendment to the British North America Act that extended federal jurisdiction to the area of survivors' and disability benefits, there has been an addition to the earlier version of this bill, Bill C-75, through the provision of benefits for widows with dependent children, for widows 35 years of age and over, for orphans, a benefit payable on the death of the contributor, and disability benefits. These are referred to as the supplementary benefits. In each case the benefits are derived through eligibility established because of contributions having been paid.

Mr. Chairman, if honourable senators would look at the explanatory note in Bill C-136 they will see that there are two or three introductory sections. Section 2 deals with interpretation, and sections 3 and 4 deal with the application in operation of the act. This is followed by Part I which is entitled "Contributions". It deals with those who are covered under the legislation, and the requirements with respect to contributions. Part II of the bill deals with pensions and supplementary benefits, and it will be noted that in section 44 there is a listing of the benefits. That is in Division A. Division B talks about the basic amounts that are paid and how they are calculated. Then there are other ancillary sections relating to benefits, the section on appeals, and finally some general provisions. Part III deals with a number of items in addition to administration—

Senator ROEBUCK: Would you give us the page?

Dr. WILLARD: Yes, I am referring to the page opposite page 2, and I am referring to the heading "Part III: Administration".

When the legislation was being considered the question of whether contributions would be collected by the establishment of new administrative machinery or by the use of the collections administration of the Unemployment Insurance Commission or of the Department of National Revenue, had to be considered. It was felt that for this purpose the Department of National Revenue could achieve the broadest coverage, and would be the most suitable. It was not considered advisable to set up new contributory machinery for this measure. So, on the contribution and coverage side the Department of National Revenue is the administrative authority. This is the same as the procedure followed in the United States and the United Kingdom. On the benefits side the Department of National Revenue, working along with the Comptroller of the Treasury is involved. Then, under certain sections dealing with financial provisions the Department of Finance is involved.

This part of the bill, as you can see, also deals with the report of the chief actuary, the question of the advisory committee, and the annual report to Parliament.

Finally, Mr. Chairman, Part IV deals with amendments to the Old Age Security Act. It is the part of the bill that makes provision for making available the \$75 a month at an age earlier than 70, as is now provided. This is done a year at a time commencing in January of 1966 when the \$75 a month will be available to those aged 69, and proceeding one year at a time until 1970 when the universal flat rate pension will be payable to persons 65 years of age and over.

Mr. Chairman, I would suggest, that if following Senator Croll's comments, you consider the bill part by part the officials will be glad to answer any questions concerning the specific sections. Perhaps we may be able to clarify the wording, because at times it is complicated. There may also be some questions that go beyond the actual wording—such questions as why certain approaches have been followed.

Senator CROLL: Who is covered by this act?

Dr. WILLARD: This legislation, together with the Quebec legislation, will cover about 6,400,000 persons in the labour force, which will be about 92 per

cent of the people in the labour force. In other words, it is the wage earners and self-employed people who are working today and who have earnings, that will be covered.

Senator CROLL: You are saying in effect, the self-employed—you mean the fisherman, the farmer, the small entrepreneur, in other words, those who earn over a certain sum of money?

Dr. WILLARD: There is a basic exemption of \$600 for employees and \$800 for self-employed persons.

Senator CROLL: So any person self-employed who earns more than \$800 is covered, and a wage earner over \$600 is covered?

Dr. WILLARD: That is correct.

Senator CROLL: Up to \$5,000?

Dr. WILLARD: That is correct.

Senator CROLL: Assuming that he has an income of \$5,000, he then will pay on \$4,400 at the rate, if it is a wage of 1.8 per cent, \$79.20, is that right?

Dr. WILLARD: Yes, and if he is self-employed he will pay \$158.40.

Senator ASELTINE: I understand that investment income is not included.

Dr. WILLARD: Investment income is not considered as income for the basis of contributions. In other words, you do not pay contributions on investment income.

The ACTING CHAIRMAN: Is it taken into consideration for establishing the basic minimum of \$600 or \$800?

Dr. WILLARD: No, it is not taken into account in any way.

Senator WOODROW: You say "anyone". Is that correct? What about the age of the applicant?

Dr. WILLARD: It starts at age 18 and the contributions are not payable from age 70 onwards. The contributors have to be 18 or over, and under 70.

Senator WOODROW: Then, no one over 70 will pay a contribution.

Dr. WILLARD: That is correct, they do not pay contributions.

Senator CHOQUETTE: Is the contribution compulsory? Suppose I am self-employed and I do not want to have any part in the plan at all, am I compelled to contribute?

Dr. WILLARD: It is a requirement that you contribute, yes.

Senator ASELTINE: Is there a penalty if you do not contribute?

Mr. D. Sheppard (Assistant Deputy Minister, Department of National Revenue): There is the usual collection procedure as is found in the Income Tax Act for collecting contributions that are required to be made under this bill.

The ACTING CHAIRMAN: Is it correct that it is a compulsory contribution for those who do come within the terms of the bill?

Mr. SHEPPARD: Yes.

Senator CAMERON: What about the position of a wife, a person who has got a good income, say \$5,000 income a year, from bonds or rent? What is her position?

Mr. SHEPPARD: Income from rent and bonds is not considered to be earnings for the purposes of this bill.

Senator CAMERON: Could a person like that pay into the fund, if she wished to do so, and then become eligible?

Mr. SHEPPARD: No, not unless she had earnings as defined in the bill.

Senator KINLEY: What about the farmer who farms in season and goes into lumbering in the winter?

Mr. SHEPPARD: Both his farming income and his wages in the lumber camp would be considered.

Senator KINLEY: Over \$800?

Mr. SHEPPARD: Over \$600 for the wage earner, and if he earned over \$800 in total, he could also include his self-employed earnings.

Senator ROEBUCK: If he makes more than \$5,000, what about that?

Mr. SHEPPARD: He does not contribute on anything over \$5,000.

Senator ROEBUCK: And if he draws out of it, is what he earns over and above \$5,000 considered at all?

Mr. SHEPPARD: No.

Senator BURCHILL: What is the minimum qualifying period of contributions in order to qualify for a benefit? Say a disability pension is to be paid to a contributor who has made contributions "for not less than the minimum qualifying period". What length is that?

Mr. D. Thorson, Assistant Deputy Minister, Department of Justice: In the case of the ordinary, the main pension benefit, which is the retirement pension, there is no minimum qualifying period. This is a term which relates only to the various supplementary benefits provided for under the act—the benefits in respect of disability, and the benefits to a widow, to an orphan, to a disabled widower. In the case of these supplementary benefits, there is a minimum qualifying period set out in section 44, subsections (2) and (3). In other words, the basic proposition is that a contributor must have made contributions for a certain minimum period before his widow, children or estate would be eligible to receive the benefits.

Senator BURCHILL: What is that minimum period?

Mr. THORSON: Perhaps I can refer you to the particular subsection. In the case of ordinary supplementary benefits, he must have made contributions for at least three calendar years, and at least one-third of the total number of calendar years that go into his contributory period. As Dr. Willard indicated a minute ago, his contributory period is the period that starts, by and large, at 18 and continues to age 70.

Senator BURCHILL: That is just it. Suppose a man starts at 18 and goes on for six years, and then his contributions stop for some reason or another, can he draw anything from that contribution?

Mr. THORSON: He contributed only for six years?

Senator BURCHILL: I have mentioned six years as an example.

Mr. THORSON: No, he would not meet the test of having contributed at least one-third of the total number of years in his period. I assume that he did not die; if he died that terminates his contribution period and he would have met the test. In those circumstances his widow would be eligible to receive the widow's benefit.

Senator BURCHILL: I am taking the case of a man who stops contributing for some reason or another. If he were disabled, I suppose this is covered; but again, is there any test as to his disability?

Mr. THORSON: That is provided in section 43(2) on page 34. I would repeat that the minimum qualifying period has reference only to the disability benefits and to the various supplementary benefits, not to the main retirement pension. If he had contributed for any length of time at all, he would be eligible ultimately for a retirement pension.

Senator BURCHILL: But did you say one-third of the period from the time he started to contribute?

Mr. THORSON: Yes, sir, in the case of the survivor benefit.

Senator BURCHILL: He has to contribute one-third to qualify?

Senator ASELTINE: Suppose some person starts to pay in at 20 years of age and he does that for 25 or 30 years and then goes to Mexico. What happens then?

Mr. THORSON: He would be eligible on attaining age 65 for a retirement benefit.

Senator ASELTINE: Whether he lives in Canada or not?

Mr. THORSON: That is correct. This is earnings-related benefit.

Senator ASELTINE: He does not lose out entirely?

Mr. THORSON: No. The residence requirements of the Old Age Security Act do not attach to this bill.

Senator ASELTINE: Is there any arrangement whereby you have to make a deal with Mexico or the United States, as the case may be, if they leave Canada and go to a foreign country?

Mr. THORSON: The right to receive payment in such a case is not contingent upon an arrangement being worked out, for example, with the Government of Mexico; although it will be seen that in part III of the bill provision has been made for the working out of reciprocal agreements relating to payment of benefits and to coverage. That, I think, is dealt with in section 108.

Senator HOLLETT: Suppose I pay my contributions from the time I am 18 until I am 64, and I die, what happens?

Mr. THORSON: Your widow will receive—

Senator HOLLETT: I have not got a widow.

Dr. WILLARD: There would be a death benefit.

Senator HOLLETT: I pay in all those years and it goes into the fund and that is all there is about it? Just to follow that up, will you tell me what percentage of the working population of Canada dies before 65 years of age?

Dr. WILLARD: We do not have this information at hand, but could probably obtain it. The situation is this; it is the opposite from the kind of protection you get under life insurance, where everything you get is dependent upon death. This is a social insurance program, where the premium is lower than it would be if large sums were payable on death. The funds or contributions are directed towards certain specific social purposes, namely, the benefits that are set out in the legislation. In this particular case, if the contributor had no orphans and no widow, the only benefit derived would be the small benefit for his or her estate.

Senator HOLLETT: They would benefit.

Dr. WILLARD: But one would have had the protection during this contributory period of the the disability benefit if one had become disabled. If the person lived through to retirement he would receive the retirement benefit.

The ACTING CHAIRMAN: What is the death benefit?

Mr. OSBORNE: The death benefit amounts to the equivalent of six months of the retirement pension to which an individual is entitled, but not more than a maximum of \$500 initially.

Senator HOLLETT: That would not vary, would it?

The ACTING CHAIRMAN: Senator Croll?

Senator CROLL: What about the case of the man who has worked all his life, and continues paying, and is out of work, does the principle differ?

Dr. WILLARD: In the social insurance measures you build protection for certain contingencies. In unemployment insurance you get the benefit if you

become unemployed. If you don't become unemployed, at least you have had the protection while contributing. It is somewhat comparable to fire insurance in this respect.

The ACTING CHAIRMAN: Senator Choquette?

Senator CHOQUETTE: Am I right in saying that five years from now, in 1970, for the first time a person aged 65 will have the option of having old age pension, but if he does it would be at the rate of \$51, and he is stuck with that for the rest of his days? Has that changed?

Dr. WILLARD: Yes, that has changed. It is not an age reduced benefit. The benefit provided is \$75, the same amount now available to those aged 70 and over. It will become available a year at a time commencing this January when people who are then aged 69 will be entitled to the \$75 a month. The following year those who are aged 68, as well as those who are 69 and 70 and over, will get the \$75 a month and so on. By 1970 everybody of 65 years age and over will be getting \$75 a month provided they meet the residence requirement.

The ACTING CHAIRMAN: Senator Phillips?

Senator PHILLIPS: What about the case of a married woman of 18, 21, or perhaps 23 years of age, who probably works for a couple of years after her marriage? What about her contribution, does she still have to wait for the so-called death benefit?

Dr. WILLARD: Mr. Chairman, the woman who has contributed to the program will, when she reaches 65, receive benefits for the period that she has contributed the same as any other contributor; and there is provision in this legislation to update the contributions to keep them in line with the productivity over the period. If she had contributed for two or three years before she was married, and then perhaps later on in her life, when her children are grown up, if she went back to work for a few more years these periods would be to her credit. They would go into her record of earnings, and her benefit would be calculated on the basis of those years.

There is also provision for the drop-out of 15 per cent of the years, so that throughout the period anybody that has illness or unemployment, or has not contributed for the full period, will get some benefit of this drop-out arrangement in calculating their benefit. The average takes into account the years of contribution and also allows for a certain drop-out in that period.

Senator PHILLIPS: But I understand that there is a minimum period in which they contribute.

Dr. WILLARD: No. For the retirement benefit there is no minimum period.

The ACTING CHAIRMAN: Senator Macdonald.

Senator MACDONALD (*Cape Breton*): I wonder if I am right in this, that if a man begins to contribute next January, say at 61 years of age, for four years, and makes a maximum contribution, he will get four-tenths of the full benefit?

Dr. WILLARD: That is right. During the first ten years there is what is referred to as a 10 year transitional period during which the level of benefits is gradually stepped up to full benefit under this retirement plan. Now, if he retires at age 65 and he has worked for four years, he will get four-tenths of the full benefit.

Senator PHILLIPS: Supposing he retires at 65, and he then receives the pension from a private corporation. Under this, I understand, he would be allowed sort of casual earnings up to \$75 a month?

Dr. WILLARD: That is correct.

Senator PHILLIPS: Now, would his private pension be regarded as earnings?

Dr. WILLARD: No. The private pension is the same as rents or investment income and are not earnings from employment or self-employment.

The ACTING CHAIRMAN: Senator Croll?

Senator CROLL: Mr. Chairman, there is one point I want to make on the question of portability. As I understand it, the usual vested pension in this country is at about 20 years of contribution in the private organization, sometimes ten years, but never less than 10 years. In this instance, he has a vested interest from the date he makes the contribution; is that correct.

Dr. WILLARD: That is correct.

Senator CROLL: Then the portability part of it starts the day he makes a contribution say in St. John's, Newfoundland, and if four days later he is in British Columbia, the pension follows him?

Dr. WILLARD: That is correct.

Senator ROEBUCK: What happens to the man on unemployment insurance. If he is taking unemployment insurance, is he liable to this levy?

Dr. WILLARD: There is to be no levy on unemployment insurance benefits. The contribution is based entirely on earnings. Unemployment insurance benefits are not considered earnings.

Senator BURCHILL: Mr. Chairman, I am wondering how they will be able to integrate private plans with this pension scheme. I have been asked that several times, and have been unable to come up with an answer. Is it presumed that it will be superimposed upon them, or are they to be integrated into the plan?

Dr. WILLARD: Mr. Chairman, first of all, I think we have to start from the fact that the federal Government does not have jurisdiction over private pension plans, with the exception of a very limited area where those concerned are employees under federal jurisdiction. This includes the Civil Service, for example. Therefore, you find nothing in the legislation dealing with the general question of private pension plans, because it is a matter beyond the jurisdiction of the federal Government. This is compulsory contributory plans. It will become the basic retirement plan across the land. Each group of employees and their respective employers will look at the private pension arrangements they have to see how they will work out in relation to this plan. In the case of some private pension plans, they may be quite modest and you would assume there would be no adjustment of the private plan. In other words, the private and public plans would ride along side by side.

In the case of the other plans, they may be quite generous, and it may be that the employees would decide that it is going to be too much to pay the full contributions to both plans, or it may be that the employer thinks that the contributions he is already making are considered when added to those of this plan.

In these circumstances the question of integration comes up. In most instances where the question of integration has to be considered those concerned consult with the carrier involved. We have about 11,000 private pension plans in Canada, and the main carriers are the trust companies, and insurance companies and the Government annuities administration. They will work with the parties involved to see whether some suitable method of integration can be worked out.

In the case of the federal Government, the question of the civil service superannuation plan, which has very generous retirement arrangements, is, of course, one illustration of steps taken to integrate two plans. The Government had the actuaries in the Department of Insurance do some work on the different methods of integration. They had the advisory committee, on which staff organizations are represented, go over these various possibilities, and finally there was a recommendation made. It was considered by the National Joint Council and the Government, and a mutually satisfactory method was accepted which has since been announced by the Government.

This means that there will be no additional contribution made by either the federal Government or the employees, but the benefits will be scaled down to some extent under the existing retirement provisions of the superannuation scheme. No one, on the average, even in the early age groups, will be worse off than they were prior to the introduction of this plan and some, particularly those at the older age levels will be better off.

The question of integration is a big one. Many of the carriers have already been working on these private plans with management and with labour. Some of them have put out pamphlets and information suggesting this should be done early. As soon as the Parliament of Canada gives approval to this legislation these carriers will, of course, be in a better position, knowing the final form of the legislation to get on with the question of integration.

Senator BURCHILL: Each individual company will have to make its own arrangements?

Dr. WILLARD: Yes, that is correct.

Senator CHOQUETTE: These insurance companies as well as some of the trust companies have been writing to people, and they have to me in the last month, asking people what type of plan they would like to accept from their companies. Are they under the impression they can take either one? I have had several notices in which they say they are ready to send their agent over with a plan for a pension.

Dr. WILLARD: I do not understand the question, sir. I was speaking of those carriers that already have worked out a pension plan that is in operation. The question comes up of revising that plan, so naturally the carriers that have been involved with it are the ones that usually work out the revision of it. It may be some of the trust companies and insurance companies are in the normal course of their business trying to encourage the extension of private pension plans.

Senator CHOQUETTE: It comes about the same time as this bill here. I have had at least five notices.

Senator CROLL: One of the arguments used during the course of the committee hearings was that more pension sales will be made after this pension bill comes into effect. As a matter of fact, that is what happened in the States.

Senator GERSHAW: Take persons earning \$5,000 a year and retiring at age 65. What pension will they get from the contributory pension?

Dr. WILLARD: He has earned \$5,000 a year and has contributed for, say, 10 years?

Senator GERSHAW: Yes, or more.

Dr. WILLARD: He would get \$104.17 at the present level of prices.

Senator GERSHAW: He stops at age 65.

Dr. WILLARD: Pardon?

Senator GERSHAW: He retires at 65.

Dr. WILLARD: Yes. Well, 10 years from now—I am taking the case of a man 55 years of age who works through until he is 65—assuming that there is no increase in the ceiling of \$5,000, the level of benefit would be \$104, and in addition to that there would be the \$75 a month that would be available, so he would get the \$179 and some cents.

Senator McCUTCHEON: That would not apply to senators, because they would still be in the labour force until they are 70.

Senator POULIOT: Mr. Chairman, I would like to ask a question.

The ACTING CHAIRMAN: Is it a supplementary question?

Senator POULIOT: Yes—a general question. It is the general question to elucidate all that has been asked by members of the committee. I would like

to know if as soon as the act comes into force there will be instructions or regulations published concerning the application of the act?

Dr. WILLARD: Mr. Chairman, after the act is passed by Parliament the departments concerned will be preparing the regulations. The regulations will take a considerable time because there is quite a bit of detail. Even though the bill is quite long and complex, the regulations will also have to have a considerable amount of work done on them.

Senator McCUTCHEON: They will be quite long and complex too.

Dr. WILLARD: I did not say that, senator. I said they would require quite a bit of work, so I cannot give any indication as to when the regulations would be ready on any particular aspect.

There is one other point about this legislation, and that is there is a 30-day requirement after royal assent in which provinces can indicate whether or not they propose to adopt a program with comparable benefits commencing in January, 1966. I would think that this also is a factor that we would have to take into account in the issuing of regulations.

Senator POULIOT: Will the regulations be published in the *Canada Gazette*?

Dr. WILLARD: Yes.

Senator POULIOT: In the meantime, until they are published, how will it be possible to elucidate the most difficult parts of the act?

Dr. WILLARD: Mr. Chairman, this is a problem. We have been trying to get together some material in the department, and we will have some general descriptive material on the bill as amended available just as soon as possible. And then, as soon as possible after the bill has received royal assent and the 30 days have passed, we will try to get out general informational material for the public across Canada, to assist them in understanding what the bill means. We will have something prepared that will be helpful for employers so they can see what is required of them under the legislation. Similarly, for other groups, such as the self-employed, for instance, we will have to have special informational material to be of assistance.

Senator POULIOT: Will there be among the material rules to govern the application of the act?

Dr. WILLARD: Yes.

Senator POULIOT: What will they be?

Dr. WILLARD: Most of these materials will set out explanatory material from the act and regulations. There are so many different places in the bill where some regulations will be required that I could not elaborate on those on this occasion.

Senator SMITH (*Queens-Shelburne*): Mr. Chairman, I would like to raise a matter that was actually raised in the house this afternoon by Senator McCutcheon. It has to do with the extent of coverage under the Canada Pension Plan in my own Province of Nova Scotia. Before you came in, Dr. Willard, I did give notice to Mr. Osborne that I would like an opportunity to raise this matter.

Senator McCutcheon's reference was to the effect that it had been stated as the opinion of the Government of Nova Scotia that this plan would not be of as much importance to the Province of Nova Scotia as it would be to others because of the large number of self-employed people with very low incomes or perhaps no incomes at all.

I know he was referring to a statement made sometime last year to the Special Committee of the Senate on Aging, of which Senator Croll was the chairman. In this statement Mr. Harding, Minister of Public Welfare for the Province of Nova Scotia, stated the same thing. Then he followed up—I meant to bring my copy of the minutes of that committee here but I forgot to do so—

but the evidence appears at page 1136. He followed up that statement with statistics that at the time rather puzzled me, and then when the matter was raised again I tried to see whether this was the position.

In his statement he said that the number of self-employed in the Province of Nova Scotia was about 20,000, and that of those earning less than \$1,000 there would be some 12,000 to 15,000 people. That did not coincide with my personal knowledge of the self-employed fishermen and others in Nova Scotia. I knew there were some, of course, but I had serious doubts, and I am wondering whether somebody is now prepared to tell us of the position in Nova Scotia in this regard.

Senator McCUTCHEON: You are quarreling with the evidence of the Government of Nova Scotia. I merely quoted their evidence.

Mr. OSBORNE: If I may, Mr. Chairman, it is my understanding that the figures quoted by the Government of Nova Scotia before the Senate Committee on Aging were based on a D.B.S. population sample of 20 per cent of the households. It did not cover farm residents, people living collectively, that is people in hotels, rooming houses or hospitals, and people who were not home when the census was taken. In the sample referred to there were 21,711 self-employed people. We have been able to calculate the total number of self-employed there, and they amount to 30,595 in the 1961 census. We calculate that 78 per cent of these would be covered.

Senator SMITH (*Queens-Shelburne*): You estimate that 78 per cent of those would have incomes over \$800?

The ACTING CHAIRMAN: Senator Phillips.

Senator PHILLIPS: I have one or two questions dealing with the coverage of farmers and fishermen. Most of the fishermen in the Atlantic Provinces, or at least the majority of them, draw unemployment insurance benefits for three months during the winter. Would they receive credit for a full year's contributions?

Senator McCUTCHEON: No.

Mr. SHEPPARD: They receive credit for whatever earnings they have in the year. Their total earnings will be the amount on which the contributions will be based, but this does not include Unemployment Insurance benefits.

Senator PHILLIPS: Do they receive credit for a full year's earnings?

Mr. SHEPPARD: The contribution is based on the earnings for the year irrespective of the period of time for which the earnings were received.

Senator PHILLIPS: Dealing with the income of farmers, very few farmers file income tax returns at the present time. Will they be required to file a return?

Mr. SHEPPARD: They have to file a return for the purpose of these contributions. Our records show that in parts of Canada there are 215,000 farmers filing returns.

Senator McCUTCHEON: How many farmers are there in Canada?

Mr. SHEPPARD: We have those figures and will locate them. The figure I have given was in connection with parts of Canada other than Quebec, and that evidence was given in the House of Commons.

Senator CAMERON: About 11 per cent of the labour force. You can get a rough rule of thumb there.

Senator CROLL: It is 13 per cent now, I think.

Senator ROEBUCK: While these figures are being sought may I ask a question? Dr. Willard, in the case of integration between a private concern and

the national, will the national make any concessions? Will there be any change in the arrangement so far as this is concerned, or do the private people make all the concessions?

Dr. WILLARD: Mr. Chairman, this is the basic plan, and where the private plans want to have integration they will have to work out on their own individual basis how they will integrate.

Senator ROEBUCK: When a basis has been worked out, will the department be able to give to the private managers the legal right to enforce whatever arrangement they come to?

Dr. WILLARD: The federal Government does not have the authority to become involved in what is in effect an employer-employee relationship. I might say, however, that private plans are in many cases being reviewed at this time for another reason. In the case of the Province of Ontario, they have legislation which concerns the supervision of private pension plans both with respect to portability and solvency, and discussions have been going on with the other provinces who are concerned about similar legislation. The pension authority, in this case being the province, is, of course, going to have to work with the people who cover private pension plans so that there will be a great deal of discussion back and forth on the question of adequacy of the private pension plans with respect to the standards developed in Ontario.

Senator ROEBUCK: Do you think that the Ontario act will give the authority, with their co-operation, to change the plans, that is the private plans, and force them upon those who might object?

Senator CROLL: There is no such act. The act has not been passed yet. He is wrong.

Senator ROEBUCK: Is that what you are going to try to work out?

Dr. WILLARD: In the case of the Ontario legislation, they set up, in effect, certain minimum standards with regard to the locking in of employee contributions, vesting of the employer contributions and solvency of the private pension fund. As I understand it the people that have a private pension plan will have to discuss that plan with the provincial authorities to see that it meets these basic standards.

Senator McCUTCHEON: But it has nothing to do with integration into the Canada Pension Plan.

Senator CROLL: Going back to the question I asked earlier—when Senator McCutcheon was letting loose on the podium this afternoon and after he was talking about the vast sums of money that were going to be handed over to the provinces, and he quoted the figures which were very nearly correct for him,—if I recall correctly there was some sum of money, and somehow or other the figure of 15 per cent runs through my mind, mentioned that the federal Government retained.

Dr. WILLARD: Mr. Chairman, the federal Government retains what would be the equivalent to the payment of benefits for three months. In addition to that, if a province does not decide to take up its share of the reserves the federal Government can invest that portion in federal securities.

Senator CROLL: If the federal Government decides what?

Dr. WILLARD: If a provincial Government does not take up its share of the reserves then the federal Government can invest these amounts in federal securities.

The ACTING CHAIRMAN: Senator Macdonald, you have been waiting for some time.

Senator MACDONALD (*Cape Breton*): Thank you, Mr. Chairman. My question is in regard to a person who is almost self-employed—he is partly self-

employed and partly employed by someone else. I have in mind a person who works for three months during the summer who on a monthly earnings basis may earn more than \$600 but who actually does not earn that much during the period he is employed. Will deductions be made from his earnings?

Mr. SHEPPARD: Yes, his employer will make deductions from his earnings if the earnings on a monthly basis are more than \$50 per month. As to what will happen at the end of the year, that will depend on his total earnings for the year.

Senator MACDONALD (*Cape Breton*): I will come to that. Such a man might be self-employed in doing a bit of farming or fishing, and he may earn over \$800 by being self-employed. Would he have to pay on what he earned over \$800 while self-employed, and also on what he earned while working for someone else during the three months period that I mentioned. Do you follow me?

Mr. SHEPPARD: Yes. In the case you are mentioning if while he was employed he earned \$300 at \$100 a month over three months he would receive an exemption in respect of \$50 per month, and would pay on \$150. If he had self-employment earnings of \$800 he would be allowed an exemption of \$450 thereon, being the total exemption of \$600 minus the \$150 allowed as a wage earner, so that he would pay on \$350 of his self-employed earnings.

Senator MACDONALD (*Cape Breton*): A person under this plan is supposed to contribute for 47 years in order to get his full benefit. If he should contribute for half that period for one reason or another would his ultimate benefit be half of what he would otherwise receive?

Dr. WILLARD: Mr. Chairman, there would be the drop-out provision, which would mean that the effective period is more likely to be 42 years than 47. So, if he worked half—it would be the ratio of the number of years worked to 42.

Mr. OSBORNE: 40 years. It is a 15 per cent drop out.

Dr. WILLARD: Yes, the bill was amended in the house to increase the period of dropout provision.

Senator MACDONALD (*Cape Breton*): If he contributed for 20 years he would get half of what—

Dr. WILLARD: Let me put it in this way; his earnings over the period would be averaged, and then there would be this up-dating process that would be carried out, so in a general way what you are saying is correct. In terms of the years that are taken into account it would be half if he worked for 20 years.

Senator PHILLIPS: Mr. Chairman, there was a question—

The ACTING CHAIRMAN: Yes, they are waiting to get the information on the number of farmers. Had you a question, Senator McCutcheon?

Senator MCCUTCHEON: I was just interjecting, but I would like to ask just one question. I should like to ask what pension will be received by an individual who will be 55 in 1966, and who has had earnings of \$5,000 a year, and who contributes for ten years. I would like to know what pension he will get at the age of 65?

Dr. WILLARD: Mr. Chairman, as I mentioned earlier, he would get the maximum and full benefit at the end of the ten years which, assuming no change in prices, would be, of course, \$104.

Senator MCCUTCHEON: Let us assume no change in prices. He will have contributed \$792, assuming he is an employee. Am I right?

Dr. WILLARD: Yes.

Senator McCUTCHEON: Having contributed \$792 he will get a pension of \$104.17 from age 65 for life?

Senator CROLL: It sounds like a good deal to me.

Senator McCUTCHEON: Now, any of us who read the *Financial Post* read about Windfall every day. Is there anyone here who can tell me what the windfall is in this case? What is the difference between the contribution of \$792 and the value of the pension?

The ACTING CHAIRMAN: Assuming what rate of interest?

Senator McCUTCHEON: Let us not assume a rate of interest.

Dr. WILLARD: Mr. Osborne is looking up something on this point.

Mr. OSBORNE: Mr. Chairman, I believe Senator McCutcheon asked that question in the joint committee—

Senator McCUTCHEON: I did, but I had no opportunity to talk about it until this afternoon.

Mr. OSBORNE: —at which time the chief actuary of the Department of Insurance, who is sitting to my right, gave this answer which is to be found at page 149 of the proceedings—the question was:

What is the actuarial value of a pension of \$104 a month at ages 65 and 70?

And the answer was:

Calculated on the basis of the mortality rates of the Canadian life table, 1960-62, and interest at 4 per cent per annum, the value of a pension of \$104 monthly, from age 65 for life is \$12,295 for men and \$14,102 for women. The corresponding value of a pension from age 70 for life is \$10,241 for men and \$11,746 for women.

Does that answer your question?

Senator McCUTCHEON: It answers my question. It is a better investment than one in Windfall.

Senator CROLL: As a matter of fact, if you take a look at a senator's salary you will find that if he is appointed to the Senate at the age of 55, or 60 under the old rules, it is worth a quarter of a million dollars, so everybody gets a windfall now and again.

Senator BURCHILL: A worker is allowed to deduct his contributions to a private pension plan from his taxable income.

Dr. WILLARD: Yes.

Senator BURCHILL: When this plan goes into effect will these contributions also be deductible?

Dr. WILLARD: Yes.

Senator BURCHILL: Has there been any computation made of the amount by which that is going to affect the revenues from the corporation income tax?

Dr. WILLARD: Mr. Chairman, since we got under way I see that Mr. Hart Clark from the Department of Finance has arrived. This is a matter on which he might comment. Mr. Clark, I do not know whether you want to answer this question. As I understand it, it is a question with respect to the revenue or income that might be lost from the fact that the contributions to a private pension plan can be deducted for income tax purposes. Have any estimates been made of this?

Mr. Hart D. Clark, Director, Pensions and Social Insurance Division, Department of Finance: I can check with our taxation division before you leave tomorrow. I have not seen any figures.

Senator BURCHILL: It would be quite a substantial amount, would it not?

Mr. CLARK: I would think so.

Senator McCUTCHEON: Whether it is substantial or not will depend upon the degree of integration, and it will depend upon whether—Dr. Willard says it is the base level and I say it is the top level—the top level gets over the normal exemptions. I think it would be a most difficult hypothetical calculation to make.

Senator CHOQUETTE: With respect to refunds of overpayments I understand that the employer is not entitled to a refund, but the employee is. Is that correct?

Mr. SHEPPARD: Well, it will depend upon what you mean. If the employer makes a mistake in the calculations he makes he could get a refund, just as anyone else would. However, the provision in the bill is for the contribution to be made on behalf of an employee in respect of each employment. At the end of the year a calculation is made in which all the employments for that particular employee are aggregated, and if that calculation indicates the employee is entitled to a refund he would be entitled to receive it, but you do not make a similar kind of calculation for employers.

Senator McCUTCHEON: What was your estimate of refunds, Mr. Sheppard? Was it not something over one million a year?

Mr. SHEPPARD: We estimate that for a year there probably would be 1,200,000 refunds.

Senator McCUTCHEON: Thank you.

Senator HOLLETT: Am I to understand from section 112(4) that it will be 10 years before money will be available for the purchase of securities by provincial governments?

Mr. THORSON: No, sir, that is not what the reference to 120 months means. As soon as contributions commence in January 1966, the contributions will start accumulating in the consolidated revenue fund and almost immediately thereafter the distribution will be made in accordance with the formula set out in section 112.

Senator HOLLETT: That is not the understanding I get from subsection (4) (a) and (b). May I read it:

(4) The part of the excess referred to in subsection (3) in any month that shall be available for the purchase of securities of any one province is that proportion of the amount of such excess that

(a) the total amount of all contributions credited to the Canada Pension Plan Account, during the 120 months preceding that month,...

Mr. THORSON: Yes, sir, but it must be realized that after the plan has been in operation for six months, what this formula looks to is the total amount of all contributions credited during the 120 preceding months. Since contributions have only been credited for six months, that is the figure which would be used in order to arrive at the allocation of funds for provincial investment purposes. In other words, it would have relevance only after 10 years, really.

Senator HOLLETT: That is what I thought.

Mr. THORSON: At the end of 15 years, for example, you would disregard the first five years, and look only at the contribution ratio for the last 10 years. It is a moving figure.

Senator CROLL: I am glad you made it simple.

Senator HOLLETT: That was a simple question. I only read part of the section and it veers off between (a) and (b) and was difficult to understand. I would like all senators to read that section.

Mr. THORSON: It is written in such a way that it will hold good whether the plan has been operating for six months or 600 months.

Senator HOLLETT: And whether you understand it or not, is that it? It is difficult to understand it and that is why I wanted an explanation. Thank you.

Senator PHILLIPS: Would the officials now have the figures of the number of farmers in Canada, and the number filing income tax returns?

Mr. SHEPPARD: The figure for the total number of farmers, other than in Quebec, is 322,000 and we estimate that, of those, approximately 52,000 would have earnings under \$800. The number who file tax returns is 215,000 of that number.

Senator CHOQUETTE: Do they not have to file returns whether they are taxpayers or not?

Mr. SHEPPARD: No.

Senator McCUTCHEON: Not unless demanded.

Mr. SHEPPARD: Not unless demanded.

Senator CROLL: But, under that "personalized" service, which I laughingly referred to, which you give, do you not send it out to everyone?

Mr. SHEPPARD: We send it to everyone who filed a return last year.

Senator McCUTCHEON: It is like the people who are on the club list.

Senator CAMERON: Of that number of farmers, roughly 100,000, who do not file income tax, if they think they are likely to get a benefit, they are going to start filing income tax returns, are they not? Is not this likely to encourage them?

Mr. SHEPPARD: They will have to file a return of self-employed earnings under this act, if they have contributions to make.

Senator CAMERON: In other words, you will have another 100,000 filing income tax returns.

Senator PHILLIPS: We would be in the age of miracles if that happened.

Senator CAMERON: What form would they file in that case?

Mr. SHEPPARD: It is T1 General now. All they would file in addition to that would be a calculation form to determine the amount of the contribution. For those obviously not taxable, we hope to have another form which will not require them to include information that is not material. It will be a somewhat simpler form than the T1 General.

Senator CAMERON: There will be a sweet lot of headaches in that deal.

Mr. SHEPPARD: The calculation form which would be filed, in addition to T1, is shown on page 1800 of the proceedings of the joint committee.

Senator ASELTINE: The exemption would enter into the picture also?

Mr. SHEPPARD: Yes, a farmer who is a married man with two children, depending on the age of the children, might earn \$2,700 or more and would not be taxable, but if he earns \$800 he will be eligible to contribute under this plan.

Senator ASELTINE: He will pay into the scheme?

Mr. SHEPPARD: Yes.

Senator FLYNN: I wonder if it is an offence under the Income Tax Act to declare a higher revenue than one makes, so that a farmer could qualify in this way for a pension if he could not earn the required amount?

Senator McCUTCHEON: He would only do that if he were 55 or over.

Senator FLYNN: Is it an offence under the Income Tax Act to declare more than the income?

Mr. THORSON: I can assure you that that question has never come up.

Senator FLYNN: You might have to deal with it.

Senator ROEBUCK: That is really opting in. I suppose it is on a yearly basis. If he makes \$800 in one year and does not make it the next year, can he go on paying?

Mr. SHEPPARD: He pays each year in respect to the earnings for that year.

Senator CROLL: If there are no further questions, I move the adoption of the bill.

Senator SMITH (*Queens-Shelburne*): Reference was made by Senator Burchill to the eligibility period of three calendar years. Would you clarify whether that means 36 months or 24 months plus one?

Mr. THORSON: If earnings are made which exceeds the basic exemption for the years and a contribution is therefore made and accepted, whether the contribution is made in respect of one month in the year or in respect of each and every month of the year, it is regarded as being a contribution for that calendar year. When the act speaks of the minimum qualifying period, a minimum of three calendar years, it is at least theoretically possible for a person to qualify having made a contribution, say, in December of one year, then a contribution in the next calendar year, and finally a contribution in January of the third year.

Senator GOUIN: Quebec will be out of that pension plan, if I understand the situation?

Dr. WILLARD: Quebec plans to have a comparable plan. It has already set out, in a resolution in the Quebec legislature, the basic essentials that are to be in this legislation. It plans to introduce its plan or to have it come into effect in January 1966 and it plans to have comparable benefits. There is provision under this legislation whereby we can enter into agreements with Quebec or any other province that may take this course, to ensure that the plans are integrated. The effect would be that we have a nation-wide system of pensions, that are portable and comparable, even though some provinces, and in this case the Province of Quebec, may pass their own legislation, administer their own act and have their own pension fund.

Senator GOUIN: Thank you.

Senator McCUTCHEON: As a supplementary question: the Province of Quebec has announced its intention to establish its own plan and initiate this legislation. I am not going to argue the constitutional proprieties of the legislation. Under the terms of this legislation, initially the plans must be comparable. There must be portability. As I recall the evidence that came before the committee, that means comparability of contributions and comparability of benefits. Now, the Province of Quebec having done that—or let us get away from them, and let us say that if the Province of Ontario a year from now, or during two years, gives notice that it is going to operate its own comparable plan, as I recall Mr. Thorson's evidence, that event having taken place, from there on the Province of Quebec or the Province of Ontario is free to alter the contributions or to alter the benefits. Am I right?

Dr. WILLARD: Mr. Thorson can speak, and extend his earlier comments if he wishes. I would add this, however, that once we enter into certain agreements to integrate the federal plan with a provincial plan, these carry with them certain obligations. For instance, we have one agreement whereby any province with a comparable plan will cover the federal civil servants in that province in the provincial plan. These agreements would have to be terminated, and the integration would no longer apply in the way that it has been worked out. So that there is a real advantage, in terms of a nation-wide integrated system of pensions, for the program to hang together, over the long run, quite apart from the legal point which you are bringing out. I will leave the legal question to Mr. Thorson for comment.

Senator McCUTCHEON: I am not asking about the advantages, I am asking about the legal point.

Mr. THORSON: Mr. Chairman, it will be appreciated that under the British North America Act the provinces do have legislative jurisdiction in this field. The right of the Parliament of Canada to legislate derives from section 94A of the act. The prime jurisdiction does, apart from section 94A, lie within the provinces—I think that must be conceded. So that it is not constitutionally possible to limit or restrict in any way the provinces' constitutional right to enact a pension plan. If then, after they have enacted the plan they choose to depart from the provisions of the federal plan, as a matter of strict law that would be their prerogative.

Senator McCUTCHEON: That is what you said before in committee, Mr. Thorson, and I think I referred to that in another place when I was speaking a few hours ago. The point I want to make is that their departure will not necessarily affect portability. I ask Dr. Willard to say something on that. Portability does not mean comparability. It does not mean equality of contributions or equality of benefits. Portability surely means that what I have up to date I can take along with me.

Dr. WILLARD: Mr. Chairman, I think it would depend a lot on the kind of plan that the province introduces. Apart from administrative difficulties pertaining to dual contributors and anomalies in benefits payable, I think Senator McCutcheon is right, that if a certain type of plan were introduced, and this is particularly true of public plans, you could have the two operating side by side, each issuing a cheque at the time of retirement. A person that moves from one system to the other would get two cheques and a smaller one from each than he would get if he stayed in one jurisdiction for the whole period.

Senator McCUTCHEON: That might be a smaller cheque or a bigger cheque.

Dr. WILLARD: Yes, it would depend; it could be. However, there could be other difficulties arise in terms of portability, and you then get into the question of whether residence requirements might be inserted into the matter. It probably would not, but there are a number of aspects, and I think you would have to examine the particular plan to see whether or not it would in fact have that result; but if it were a plan such as this, which is of course portable outside of Canada as well as in, then this result would not—

Senator McCUTCHEON: Your plan is completely portable outside of Canada as well as in?

Dr. WILLARD: That is right.

Senator McCUTCHEON: So that a province having contracted out, if it chooses to say "We are going to have higher contributions and higher benefits," as long as they made the plan portable inside and outside of Canada, they still have portability. The point I want to make is that uniformity and portability are not equivalent.

The ACTING CHAIRMAN: Theoretically the province might delay the vesting, which would affect portability.

Senator McCUTCHEON: Theoretically it might, but the fact is that according to Mr. Thorson, and he has repeated the evidence he gave before the committee, the Province of Quebec two years from now can do anything they want.

The ACTING CHAIRMAN: Any further questions?

Senator ASELTINE: I have a question with regard to these windfalls, and I would like to know if this statement I have here is correct. I take it that those now retired get nothing and those that will retire in two or three years time get an insignificant pension. Yet another group, that is, those that retire after contributing for only ten years get enormous windfalls or unearned bonuses.

For example, the person at the maximum earnings who retires at age 65 after contributing for only ten years will have paid in a total of some \$1,000 into the Canada Pension Plan—his employer matches this—yet the pension he gets is worth more than \$18,000. I want to know if that is a correct statement, or an approximately correct statement.

Dr. WILLARD: Mr. Chairman, it is correct that there are cross-subsidies that occur under this social insurance plan, as under most social insurance plans.

The fact is that in bringing in an earnings related plan you have to decide how long you are going to wait until you get the level of full benefit. In some situations you blanket people in and start giving them the full benefit right off, even though they have not contributed enough to pay for the benefit. In this type of plan you are not dealing with a pension as you would under a deferred equity scheme, say, under a government annuity. You are dealing with something that is quite different.

When old age security was brought in in 1952 the people who were then 70 that were not on old age assistance automatically received an income to which they had not contributed in terms of earmarked taxes levied for that purpose. In each age group immediately below that age group, people contributed, some through personal income tax, through the sales tax, and some indirectly through the corporate income tax. These people that were younger, in their sixties and late fifties, who have now reached the time when they are getting the universal flat rate benefit, probably have not contributed sufficient to the earmarked taxes to justify their benefits on an actuarial basis. Yet they have contributed more than the people that were beneficiaries the day old age security came into operation. So you can see that there were windfalls of different magnitudes, if that is what you wish to call it.

Now, in this legislation there is provision for reducing the age for the \$75 a month pension down a year at a time. Many of the people who receive this benefit at an earlier age, in a sense, if you figure what they have contributed under the 3-3-4 formula, will, on this basis, get a windfall. Similarly, in some of the programs in other countries, such as the United States' program, when they brought in new categories that had not previously been covered, people in these categories did not have to wait until they had contributed for a longer period to catch up to other groups that were already in the plan; instead a system of blanketing them was employed.

This is the same kind of approach followed in this legislation, where rather than wait for 20 or 40 years to get to the full level of benefit a decision has been made that the full level of benefit will be reached in ten years. That does mean some cross-subsidies, or some windfalls, if you want to call it that, which in this case is for those in the older age groups.

Senator SMITH (*Queens-Shelburne*): On this matter of windfalls, is there not also another area covered by the bill which contains the same kind of windfalls? I do not think we can quarrel with that at this time. Take the case of a young man in the early twenties who is married and has a couple of children and dives into a dry swimming pool and becomes a helpless paraplegic. For the rest of his life and his family's life he gets a tremendous windfall, and his neighbours will thank God for it. You have to have a windfall in these areas, and I do not see any way you could devise a bill that would not provide this kind of windfall in the case I have just put.

Dr. WILLARD: That is correct.

Senator FLYNN: Mr. Chairman, I have a question concerning Part IV, the amendments to the Old Age Security Act. Would you agree this is a gradual abrogation of the Old Age Assistance Act?

Dr. WILLARD: For each year this pension drops down one year, the application of the Old Age Assistance Act, which has a maximum at the moment

of \$75, will no longer be applicable, so that in five years the federal-provincial assistance plan will disappear, and this universal flat rate pension will take its place.

Senator FLYNN: So by the opting-out formula, when you are giving this to the province you are taking it back at the same time?

Dr. WILLARD: I would not wish to comment on the opting out formula.

Senator FLYNN: I am not insisting. It is my comment.

Dr. WILLARD: I do know that this will mean a considerable saving to the provinces in the case of Old Age Assistance and also to some extent in the case of Blind Persons' Allowances and Disabled Persons' Allowances. It will amount to about \$50 million a year when we get to 1970. That is the magnitude annually when the five-year period is fully completed. I have mentioned Blind Persons' Allowances because it is paid to the group 65 to 69, as you know. Fifty million is about the magnitude involved in the case of the three programs where we are paying allowances to the 65 to 69 age group.

Senator BURCHILL: The present formula of 3-3-4 will be retained?

Dr. WILLARD: The present formula of 3-3-4 provides sufficient income to meet the additional expenditures.

Senator BURCHILL: And the Old Age Security—

Dr. WILLARD: The Old Age Security Fund will finance this part of the bill.

Senator BURCHILL: They will be merged together?

Dr. WILLARD: No, the Old Age Security fund remains. Part IV of this bill merely amends the Old Age Security Act, under which pensions are on a universal basis with the only requirements being residence and age. The financing of those flat rate benefits will come out of the Old Age Security fund, and as I have mentioned there is sufficient revenue coming in over the period ahead to pay for the lowering of the benefit on the present contribution formula.

Senator McCUTCHEON: Mr. Chairman, Dr. Willard is not making that, I hope, as a factual statement, because I hope to talk to Mr. Benson about that because I do not agree with that statement.

Dr. WILLARD: Well, sir, that statement is based on estimates which have been made by the Department of Finance, and they are the best we have at the moment.

Senator McCUTCHEON: You are not responsible for the estimates of the Department of Finance, Dr. Willard.

The ACTING CHAIRMAN: Are there further questions?

Senator CHOQUETTE: Mr. Chairman, before we adjourn, I am wondering if we have not asked all the questions we might have to ask, and I do not see any necessity for meeting again tomorrow morning, unless there is someone who has questions to ask of the ministers. I do not know, but I do not see any necessity for bringing back all these people.

The ACTING CHAIRMAN: I am in the hands of the committee and I did say to the committee that the two ministers would be available tomorrow, if they were needed by the committee.

Senator McCUTCHEON: Mr. Chairman, I do not imagine we will keep the ministers very long tomorrow, but I do think it would be inappropriate if we did not have the ministers. There will be some members of the committee who will undoubtedly have some questions to ask on policy, which I think we have avoided reasonably well this evening, and it will be the policy matters we will want to discuss with the ministers tomorrow.

While I am very sympathetic to my friend Senator Choquette, and I do not want to get up early and come to the committee meeting tomorrow morning, I think we should have it, and I will be here.

The ACTING CHAIRMAN: I was wondering whether the committee might feel, in view of the fact the officials have answered the questions in explanation of the bill, you would like to approve all but the preamble and title, and then on this basis we would discuss with the ministers questions of principle. Or are there any clauses you want to stand, or do you want to stand the whole bill?

Senator McCUTCHEON: I would agree that we approve everything but the title and preamble, on division.

The ACTING CHAIRMAN: I guess you do not want to move that then, Senator McCutcheon?

Senator SMITH (*Kamloops*): I so move.

The ACTING CHAIRMAN: It is moved by Senator Sydney Smith, seconded by Senator Taylor, that the sections of the bill, other than the title and preamble, be approved.

Senator McCUTCHEON: On division.

The ACTING CHAIRMAN: Carried, on division.

Senator CONNOLLY (*Ottawa West*): Could I just ask, is it satisfactory to the committee that the officials need not come tomorrow? Is that understood?

Senator McCUTCHEON: It is understood, as far as I am concerned.

Senator CONNOLLY (*Ottawa West*): Is there anybody else who might require them?

The ACTING CHAIRMAN: Subject to what the ministers themselves might decide.

Senator CONNOLLY (*Ottawa West*): Yes, they might bring them.

The ACTING CHAIRMAN: We will leave it to the ministers and their officials.

Senator BURCHILL: I think we are very grateful to them for the information they have given us tonight.

The ACTING CHAIRMAN: Dr. Willard, on behalf of the committee, I tender our vote of thanks to you and your officials for your help to us this evening.

On the motion to adjourn, the meeting stands adjourned until tomorrow morning at 9.30.

Some Hon. SENATORS: 10 o'clock.

Senator CHOQUETTE: I suggest 10.30, because we have exhausted probably all our questions.

The ACTING CHAIRMAN: It is a question of the ministers' time. Having in mind the length of time we might take, we had suggested 9.30 a.m. I think perhaps we should leave it that way.

The committee adjourned.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, April 1, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-136, to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors, met this day at 9.30 a.m. to give further consideration to the bill.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, we have a quorum, and the time has arrived to resume our consideration of Bill C-136. It will be recalled that last evening we heard the officials of the various departments concerned. We approved the sections of the bill but allowed the preamble and the title to stand in order that questions might be asked of the two ministers concerned, the Minister of National Health and Welfare, Miss LaMarsh, and the Minister of National Revenue, Mr. Benson. These ministers are here.

My suggestion is that we proceed with the questioning right away. Both ministers are due at a cabinet meeting later this morning. Senator McCutcheon's name is the first on my list of those who wish to ask questions.

Senator McCUTCHEON: Thank you very much, Mr. Chairman. Miss LaMarsh knows my views and I know hers, and I do not think a further dialogue between us would advance the situation very far. However, I would like to ask Mr. Benson a question. At page 12308 of *Hansard* the House of Commons of March 12 last, Mr. Benson set down the estimated outflow from the old age security fund taking into account the five age groups that are going to be brought in over the next five years, namely, 69 in 1966, 68 in 1967, and so on. The figure for 1966 was \$998 million, which rises to a figure of \$1,579 million in 1970. I am sorry that I have not a copy of *Hansard* before me, but my recollection is that the minister said that the present 4-3-3 formula would be sufficient to cover those amounts.

The outgo is going up at the rate of about 12 per cent per annum over that five-year period, as opposed to a rate of from 3 per cent to 4 per cent per annum, taking into account merely the people moving into the age group of 70. I am wondering on what basis he made his calculation. I have done it on a 7 per cent basis, and it is my opinion he is going to leave a Conservative Minister of Finance about \$120 million short.

Senator CROLL: Twenty years from now?

Hon. E. J. Benson, Minister of National Revenue: Mr. Chairman, I would not like to admit that there will be a Conservative Minister of Finance in the near future, but I would say that the estimates I gave were based on figures prepared by the Department of Finance. One of the things that happened, Senator McCutcheon, in the last year was the coming into full effect of the sales tax on building materials.

Senator McCUTCHEON: I had to make a guess at what that would amount to in a full year. I know what it has been for the last quarter. It is fully in effect now?

Hon Mr. BENSON: Yes, it is in effect now, and with this included it is estimated we will be able to carry the proposed pensions adequately without any change in the 4-3-3 formula. As a matter of fact, we will build up a slight surplus. There will be a deficit at the end of the 1964 fiscal year.

Senator McCUTCHEON: At the end of what?

Hon. Mr. BENSON: At the end of the 1964 fiscal year.

Senator McCUTCHEON: You have got a deficit of about \$80 million?

Hon. Mr. BENSON: Yes. There is a deficit in the fund as at the end of the fiscal year. However, by the end of next year, even taking into account the changes, we would start having a small surplus in the fund and this will build up, in spite of the increase in outpayments, until 1970. The fund will be sound. My figures were based on estimates coming from the Department of Finance based on projected tax revenues.

Senator McCUTCHEON: Would you know what escalation factor they used?

Hon. Mr. BENSON: No. I think—

Senator McCUTCHEON: Whether they were assuming 5½ per cent increase in Gross National Product, or 6 per cent?

Hon. Mr. BENSON: I really do not know offhand, but probably—

Senator McCUTCHEON: Their estimate is that it will be approximately in balance?

Hon. Mr. BENSON: The Department of Finance, in my experience with them as Parliamentary Secretary, were never over optimistic. In these things I think they act conservatively, with a small “c”.

Senator McCUTCHEON: Some of us hope they would act more in that way.

The ACTING CHAIRMAN: Honourable senators, I was a little remiss at the outset of this meeting. I should have informed the Senate that this is the first time the Honourable Miss LaMarsh has appeared before a Senate Committee. Therefore, I feel that a special word of welcome would be appropriate.

Hon. SENATORS: Hear, hear.

Senator McCUTCHEON: We all hope it will be the last time.

The ACTING CHAIRMAN: Not for some years.

Senator McCUTCHEON: I should like to direct one question to Miss LaMarsh, just to confirm, or possibly to have her contradict, what I said yesterday in the chamber in reference to table 1 in the White Paper, page 9. At the time this table was prepared, as I understand it, it was prepared on the basis of the bill which was originally presented to the House of Commons. The table deals with the monthly retirement pension during the early years of the plan. Column one shows that in 1968, in the second year of the plan, the maximum pension which would be payable to a pensioner with maximum pensionable earnings would be \$20.83, which is two-tenths of maximum. When this table was prepared there was no provision in the bill for bringing in people age 69 and age 68 by 1968; people of age 67 actually will be receiving the categorical family benefit of \$75 a month. My statement was to the effect that that group of people were now going to be better off would receive a larger pension than originally contemplated by the bill, even though there might be some deferment for a year or two of the coming into effect of the earnings-related plan. Is that correct, Miss LaMarsh?

Hon. Judy LaMarsh, Minister of National Health and Welfare: Yes, Mr. Chairman, it is correct. This chart, of course, did not include at the time the flat-rate pension at age 65 which will be payable over the five years. The Senate will appreciate that the joint committee of both houses dealt with this and expressed considerable concern for those in the age bracket close to retirement.

Senator McCUTCHEON: The age 65 to age 69 group?

Hon. Miss LAMARSH: Yes. While the Government had in mind such policy, it did not have in mind that it should be introduced at such an early date. However, that program was accelerated, partly to meet the recommendations of the joint committee.

Senator McCUTCHEON: But my statement is correct?

Hon. Miss LAMARSH: Quite correct.

Senator McCUTCHEON: Then I have just one more statement to put to Miss LaMarsh. Assuming that this bill does not go through, which is the most unlikely thing in the world, it would be possible at the next session for the Government to bring in Part IV as a separate amendment to the Old Age Security Act. Having done that, the Government could sit back and take another year to decide whether this was the best way to take care of the over-all problem, without adversely affecting the incomes of people of age 67, 68 and 69.

Hon. Miss LAMARSH: It would be a Government decision, of course, as to whether or not it would proceed with that part.

Senator McCUTCHEON: I could appreciate that, but I am putting it as a hypothetical question, that it could be done.

Hon. Miss LAMARSH: Hypothetically, anything is possible. Those things which could stop the Canada Pension Plan might stop any kind of wage-related benefit. While the senator has suggested that it might be done in the next session or in another year, may I say that I am sure honourable senators have not had the fact escape them that it is two years now since this was introduced and that the course of the Canada Pension Plan, even in this longest session, has consumed months and months of time. It might be, that if both chambers decided they did not want to go on with all of the bill as now amended, the Government would decide on some other form of approach, or refer it to some other forum.

Senator McCUTCHEON: That is the best argument I have heard for not putting the bill through.

Hon. Miss LAMARSH: The suggestion of the honourable senator is really, I suppose, abandoning, at least pro tem, any wage-related program.

Senator McCUTCHEON: Looking at it more closely, I am much more optimistic than the minister. I feel that Parliament would act very quickly on Part IV, brought in as a separate bill. I realize the minister's experience probably leads her to take the more pessimistic outlook on that part of it. That is all, Mr. Chairman.

The ACTING CHAIRMAN: Are there any further questions?

Senator ROEBUCK: I thought the ministers were going to give us a brief summing up of this situation. I have not come prepared with detailed questions at all, but I would like to hear a statement from both ministers as to what it is and what they expect to accomplish by it, and so on.

The ACTING CHAIRMAN: Senator Roebuck, of course we went into it pretty exhaustively in the joint committee and on second reading and in committee yesterday evening. Furthermore, the debates of the other place have been available to us. If there is something the minister would like to add that would be of interest to the committee, I am sure we would be glad to hear it.

Senator CONNOLLY (Ottawa West): I understand, Mr. Chairman, the minister thought very well of the work of the senators on the joint committee.

Hon. Miss LAMARSH: Yes, Mr. Chairman. I do not have any prepared statement, but I should like to say, with your permission, as a very new Member of Parliament—since I have not yet been here five years—how struck I was with the contribution made by senators to the joint committee. I am sure that

members of both houses are aware that the public is not always satisfied that they are making a satisfactory contribution; and we in the lower house all too often, I am afraid, justify that, though not so much in the upper house. However, on this particular occasion, the graciousness of members of the upper chamber, as well as of the lower, in giving up time over the Christmas holidays and through the first couple of months of the year, to attend the committee with such keen interest in the work, was a factor which struck me particularly. The members of the Commons, of course, have not had anything like the experience that individual or collective senators have had in dealing with a measure which has not only such a tremendous amount of social implications but which is also so complicated financially. I myself have had no experience with a joint committee, except for the Joint Committee on Indian Affairs a few years ago. I must say, Mr. Chairman, that I was simply delighted with the contribution made, particularly by the elder statesmen.

The ACTING CHAIRMAN: Thank you, very much. Senator Woodrow?

Senator WOODROW: Mr. Chairman, I clipped the following item from last night's paper:

For better or for worse a pension plan for all Canadians is going to be superimposed on the many and varied private plans already in existence.

When you are dealing with the private pension plan, you are not superimposing anything. That is a matter to be worked out, is it not?

Hon. Miss LAMARSH: Yes, sir, it is.

Senator WOODROW: So this is incorrect?

Hon. Miss LAMARSH: I may say, senator, that this is not the first newspaper report that I have found to be erroneous in reporting the Canada Pension Plan.

Senator WOODROW: That is right. You have not changed your plans of working it out.

Senator McCUTCHEON: Why, Miss LaMarsh, is this plan not worked out with regard to private pension plans?

Hon. Miss LAMARSH: We have to work out a solution to integrate a private pension plan, in the case where we are the employer; that is, the Civil Service plan.

Senator McCUTCHEON: Your own private plan.

The ACTING CHAIRMAN: Senator Molson?

Senator MOLSON: Why was it considered necessary to relate the Canada Pension Plan to the pension index and the earnings index?

Hon. Miss LAMARSH: It may not have been necessary, senator. There are two different approaches. One approach is that which has been used in the United States, and heretofore, at least, in the flat rate pension, and that would leave inevitable increases to more or less spasmodic legislative action. The other approach, adopted by other countries, is an attempt to put some regularity into increases and have them more closely parallel the experience outside the community. After looking at the schemes in other countries which have an automatic feature, and the way in which increases have come about in the United States, it was considered to be preferable to use the automatic acceleration method.

Senator McCUTCHEON: The use of the consumer price index will not bear the same relation to the income of the person who is emerging from the labour force; it will merely keep him standing still. Why did you not use the pension index throughout at the end of ten years? We do not want prices to go up, we want productivity to go up.

Hon. Miss LAMARSH: I would think, senator, it would be agreed by those of all political faiths that as Canada becomes richer we would hope that there would be an acceleration—a sharp one, if justified—in the amount of money available to all Canadians, including the retired group. I have never said, nor, so far as I am aware, has any government spokesman said, that we believe the amount of flat rate pension is sufficient for all time. "Sufficient" is a pretty loose word, in any event, but I would contemplate in future there will be an increase in this amount. I have also discussed this on a philosophical basis with my deputy minister, who I think is the only official who has been associated with all welfare measures since 1927, as to what exactly is "enough", and it seems that it cannot be decided, even on a philosophical basis, much less on a dollar basis.

Senator McCUTCHEON: What you are saying is that tying the old age security to the consumer price index does not, in your opinion, bar future categorical increases in the old age security payments?

Hon. Miss LAMARSH: You put it so much better than I do, senator. That is correct.

Senator McCUTCHEON: That being the case, Miss LaMarsh, why do you put that index in? You have denied, of course, that the Government expects the cost of living to go up and up and up, but this plan says implicitly that it will and the Government must expect the cost of living to go up. Here they give us estimates based on a 2 per cent and a 1½ per cent annual increase, or vice versa. If you recognize that an increase is going to take place from time to time, in any event—and I will not quarrel with that—then, why put the index in?

Hon. Miss LAMARSH: Because unless and until such increases take place, those who are in retirement will be able to keep up with the changes in the economy.

Senator McCUTCHEON: No, they will not be able to keep up with the changes in the economy.

Hon. Miss LAMARSH: I am not necessarily saying that any potential increase in the flat rate pension would be to take care of the increases in the cost of living. I thought I indicated rather that it would be to provide a larger share of the wealth of the country to those in retirement.

Senator McCUTCHEON: Then surely you are using the wrong index? It is the pension index that refers to increase in wealth.

Hon. Miss LAMARSH: But increases in the flat rate pension would allow a higher participation.

Senator McCUTCHEON: I will not pursue my line of questioning, but you are contemplating an increase in the flat rate pension, and I contend that psychologically to the public it would be better not to have the index.

The ACTING CHAIRMAN: Senator Croll?

Senator CROLL: From reading what you said in the House of Commons, Miss LaMarsh, without being specific, I gather you indicated that the Government has some further plans almost on tap with respect to those of 75 years of age and over?

Hon. Miss LAMARSH: Oh, yes, senator.

Senator McCUTCHEON: You are not referring to the Senate are you?

Senator CROLL: Then I will make it 70 years of age and over.

Hon. Miss LAMARSH: This is no secret. I have been discussing this publicly for a year. There is a part of the population, of course, that never can be taken care of, either by flat rate pension increases or by a contributory wage-related plan, and that may well need public assistance of one kind or another. The department has been working with the provinces for more than a year

on a greatly expanded welfare program. I think it is next week that we are preparing for a dominion-provincial meeting of welfare ministers, to be followed by a dominion-provincial meeting of premiers, and I hope it will then be finalized. If and when it is, during the next session of Parliament, I would hope that legislation would be back before this committee.

Senator CROLL: Miss LaMarsh, I do not know whether this thought is shared or not, but I do hope that those of 70 years and over, and the others who will be brought in, are on a fixed basis that has dignity, standing, and some degree of security. I hope that anything we do does not suddenly turn into a welfare problem, because it would be a tremendous mistake.

Senator McCUTCHEON: It is a fact, is it not, that in no jurisdiction, no matter what government-sponsored pension plans they have, have you been able to move completely out of the field of welfare?

Hon. Miss LAMARSH: That is quite correct, senator.

Senator McCUTCHEON: And you never will?

Hon. Miss LAMARSH: Well, it is even more true in a country such as Canada which has such a broad spectrum of living conditions. In some parts of Canada \$75 is considered, if not munificent, at least, adequate.

Senator McCUTCHEON: \$150 a month is pretty good in Newfoundland out-ports?

Hon. Miss LAMARSH: Well, I have not lived there, but I am told that in some cases it is more than the wage-earner of the family has. But I do not think that anyone could ever try to support a proposition that that amount of money for an aged couple living in an urban centre will even keep life afloat. There is a group of individuals already on OAS who require public assistance; and I think I have already said publicly that we feel that the need is to abandon the means test and to look at an individual's need, so that one may tailor assistance programs to the individual depending upon where he lives. Enough to live on in one place, as I say, is more than adequate in other places, while in still others it means starvation. The public assistance programs are terribly important. I sort of see them as halves an apple, the contributory pension plan with respect to our income-earning citizens, and the assistance program equally important for others who are not reached, and could never in contemplation be reached, by a program which is based upon adequate lifetime earnings and contributions made on them, in addition to those who have not been able, over their lifetime, to build up a good enough pension for retirement. I do not think it is possible anymore to say what used to be said in the nineteenth century, that the poor will always be with us. I do not think people today agree it is necessary that the poor be always with us. If we can learn anything we must learn that we can do away with poverty. And, as a matter of fact, there is a gentleman south of our border who has made a good thing out of talking about this. We here in Canada are not just talking about it. It seems to me the goal of our society is to do away with poverty and not to accept the inevitability of the poor and to be satisfied only to give them handouts.

Senator CROLL: I think about 20 per cent of those people 70 and over obtained assistance. The point I am making is there was a principle which stood out by itself and had dignity in it, whereby the man said, "This belongs to me, and this is not public assistance." Surely you have to help them. What you have said makes absolute sense, but in the assistance you may give those people of 70 and over you have to be careful not to detract from the great program that is there at the present time and carries far more than welfare with it.

Hon. Miss LAMARSH: Of course, that program is going to be reduced to those aged 65, and they have a direct share in what is happening in their own country.

Senator McCUTCHEON: Have you thought of using an income test?

Hon. Miss LAMARSH: Yes, we thought of it.

Senator CROLL: And threw it out.

Hon. Miss LAMARSH: Yes.

Senator McCUTCHEON: Why?

Hon. Miss LAMARSH: Because it is really a means test: you look at how much people are getting and decide whether or not they qualify. Means tests are things which most people in the social field and in the welfare field feel are antiquated.

Senator McCUTCHEON: I do not agree with you that is a means test, but we have not the time for a philosophical discussion this morning.

The ACTING CHAIRMAN: Any further questions?

Senator SMITH (*Queens-Shelburne*): I would like to ask a question of the minister. Are teachers in a province considered to be employees of the provincial government for the purposes of the act?

Hon. Mr. BENSON: No, they are not for the purposes of the act, unless they are in fact employees of the provincial government. There are some teachers that are employed by provincial governments, I understand, by the departments of education, in which case they would be employees of the province.

Senator McCUTCHEON: Such as teachers' college staff?

Hon. Mr. BENSON: Yes.

Senator SMITH (*Queens-Shelburne*): In other words, the teachers in city or town schools employed by those particular school boards would be under the Canada Pension Plan like everybody else in the country?

Hon. Mr. BENSON: Yes.

Senator SMITH (*Queens-Shelburne*): And their contributions will be matched?

Hon. Mr. BENSON: Yes.

Senator SMITH (*Queens-Shelburne*): Have there been some approaches to the department with regard to the inclusion of provincial employees under section 7 of the act? Are those people who are working in a province under the provincial superannuation schemes coming forward and seeking agreement with the department in order to integrate them in some fashion similar perhaps to that of a civil servant?

Hon. Miss LAMARSH: Some months ago Mr. Hart Clark of the Department of Finance, whose particular responsibility has been to deal with the integration of the civil service pension, toured across the country to provincial capitals, explaining the plan and possible methods of integration to provincial officials who will be responsible for their own civil service plan's integration, in some cases such as teachers' pension plans. We are given to understand they understood fully and saw no particular difficulty. In particular Mr. Clark saw those who would be integrating the teacher plans, since there has been some special concentration on them from the Canadian Teachers' Federation. No difficulty at all is foreseen in making sure that teachers do not lose anything when their plans are integrated with the Canada Pension Plan.

Senator ISNOR: Miss LaMarsh, if and when the act is proclaimed law will your department be issuing a pamphlet or booklet to firms who presently have private pension plans so as to show them how to operate?

Senator McCUTCHEON: Miss LaMarsh will just send them a copy of the act. It is very simple!

Hon. Miss LAMARSH: I would think, Senator Isnor, if such a book is sent out it will be from my colleague's department. But it should be recalled, presupposing passage by the Senate, and perhaps I am unjustified in presupposing the honourable Senate will deal with the Pension Plan in a favourable way—it will be appreciated there is a period of 30 days after the bill is proclaimed in which it will be ascertained what provinces, if any, will be in the plan and what provinces, if any, will be enacting comparable legislation of their own and thus not be covered. We would have to wait until the expiry of that 30-day period before we started sending out information.

Senator ISNOR: I think it would be very helpful if you sent out a pamphlet or booklet before.

Hon. Miss LAMARSH: I do not know whether the senators know—I did say it in the house, but somehow this did not seem to be reported publicly—

Senator CONNOLLY (*Ottawa West*): Nothing that gets on *Hansard* is ever reported publicly.

Hon. Miss LAMARSH: Most senators, and one in particular, know the public attitude taken by insurance companies who are responsible for about 25 per cent of the private pensions. The trust companies administer about 75 per cent of the private pensions in the country. Within the past year the trust companies have been in communication with my department and have offered their assistance. They have been down to see my officials and have been working very actively towards the integration of the private schemes which they administer, and the Canada Pension Plan.

Hon. Mr. BENSON: In this regard there will be an interim document available for people who are interested in the pension plan. We hope to get out a mimeographed form to circulate until a printed document is available.

Senator CROLL: In both languages?

Hon. Mr. BENSON: Everything is in both languages.

Senator McCUTCHEON: I would like to make one comment. It seems to me Miss LaMarsh is reflecting a little unfairly on the life insurance companies, and possibly not. I think their presentation was made in good faith because they felt they had alternatives that were, in the circumstances, more satisfactory.

I make this further comment, that by and large trustee pension funds do not provide any guarantees of benefits, and from that point of view it is infinitely easier to integrate that type of pension fund with a scheme like this than those with an insurance pension plan which does provide guaranteed benefits.

Hon. Miss LAMARSH: I would hope the senator would not think I was inferring that about insurance companies. I did assume their attitude, which was made clear before the joint committee, was known to all honourable senators, but the other side of the coin, I am sure—

Senator McCUTCHEON: Maybe I am a little sensitive.

Hon. Miss LAMARSH: Perhaps.

Senator CAMERON: Mr. Chairman, the question I want to ask does not bear directly on the immediate situation, but I have the feeling it is going to affect the pension plan and retirement plan very seriously in five or 10 years, and that is the impact of rapid technological changes.

The question I want to ask is: Has any interdepartmental committee been set up yet concerned with long-range planning to deal with the impact of these changes which are bound to affect employment and earnings for large groups of people? Just take the illustration of the Toronto printers' strike and the

impact that it has had on those people. This will be multiplied many times for the next 10 years. It seems to me that some plans might be made in expectation of what might happen. Is there any such thing as an interdepartmental committee to deal with this at the present time?

Hon. Miss LAMARSH: Not exactly, but the Department of Labour has been increasingly concerned over the years about the problems of automation. I think the senators will know that the minister announced, as his department will be responsible for the National Employment Service, a stepped-up manpower program, the first and most important subject of which is the study of automation. In addition the overall picture of what will happen within and without government will be studied. It will be appreciated that during the last two years there has been an Economic Council of Canada which has been considering the particular point with reference to the situation in the future.

Senator CAMERON: In talking to business people about this, they are beginning to say "We are doing some planning, but we cannot plan very far ahead unless the Government gives some indication of what their long-range plan will be so that business will know the kind of climate or framework within which they are likely to have to make their plans."

Hon. Miss LAMARSH: This is one of the basic reasons for the Economic Council of Canada. It is difficult for a Government to plan ahead when it does not have a majority in the house, and when it realizes that tomorrow it may not be the Government. But for the last few years Canada has had a number of minority governments, so long-range planning was put in the hands of a body that was not quite as immediately responsive to what may happen on successive election days.

Senator CAMERON: I think the Economic Council itself could become frustrated unless there was some indication from the Cabinet as to how far they might go. I realize the difficulty of your position, but I have reason to believe that there is some uneasiness on the part of these people that there wasn't a sufficient concern or activity at high political levels to make some long-range plans.

Hon. Miss LAMARSH: Well, to relate this to the Canada Pension Plan, it is known there is a very high-powered interdepartmental committee that put the plan together. At every stage along the way the Labour Department, the Finance Department as well as the Department of National Revenue and the Department of National Health and Welfare and some others, including the Unemployment Insurance Commission, the Comptroller of the Treasury and the Department of Insurance, were particularly interested from their own points of view. Their viewpoints were never forgotten while the plan was being put together, or what the effect of the plan would be on the future. Schemes of this kind have been in operation for many years in other industrial countries, and we have some idea of what happened there as guidelines.

The ACTING CHAIRMAN: Any other questions? Would the committee like to deal with the bill before the ministers go?

Some Hon. SENATORS: Yes.

The ACTING CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall the title carry?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall I report the bill without any amendment? On division?

Senator McCUTCHEON: On division.

Senator CROLL: May I suggest that we let both the ministers know how appreciative we are that they came down here, and how helpful they have been to us on this bill.

The committee adjourned.



Third Session—Twenty-sixth Parliament
1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 1

Complete Proceedings on Bill C-97,
intituled: "An Act to amend certain Acts respecting the superannuation
of persons employed in the Public Service, members of the Canadian
Forces and members of the Royal Canadian Mounted Police."

THURSDAY, MAY 13, 1965

WITNESS:

Department of Finance: Mr. H. D. Clark, Director, Pensions
and Social Insurance.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden. *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Bouffard	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Kamloops</i>)
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lambert	Taylor
Crerar	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis
Flynn	Molson	Woodrow—(50).
Gelinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 6th, 1965:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Lang, that the Bill C-97, intituled: "An Act to amend certain Acts respecting the superannuation of persons employed in the Public Service, members of the Canadian Forces and members of the Royal Canadian Mounted Police", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Lang, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 13th, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Bouffard, Brooks, Connolly (*Ottawa West*), Cook, Croll, Davies, Gershaw, Haig, Hugessen, Isnor, Kinley, Leonard, Molson, Reid, Smith (*Queens-Shelburne*), Taylor, Vaillancourt, Willis and Woodrow. (22)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Brooks it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-97.

Bill C-97, An Act to amend certain Acts respecting the superannuation of persons employed in the Public Service, members of the Canadian Forces and members of the Royal Canadian Mounted Police, was read and considered, clause by clause.

The following witness was heard:

Department of Finance: Mr. H. D. Clark, Director, Pensions and Social Insurance.

On Motion of the Honourable Senator Haig it was Resolved to report the said Bill without amendment.

At 10.00 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, May 13th, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-97, intituled: "An Act to amend certain Acts respecting the superannuation of persons employed in the Public Service, members of the Canadian Forces and members of the Royal Canadian Mounted Police", has in obedience to the order of reference of May 6th, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, May 13, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-97, to amend certain acts respecting the superannuation of persons employed in the Public Service, members of the Canadian Forces and members of the Royal Canadian Mounted Police, met this day at 9.30 a.m. to give consideration to the bill.

Senator SALTER A. HAYDEN in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have with us Mr. H. D. Clark, Director of Pensions and Social Insurance Section of the Department of Finance. Mr. Clark, could you give us, in your own words, an explanation of the effect of these different provisions?

Mr. H. D. Clark, Director, Pensions and Social Insurance Section, Department of Finance: Mr. Chairman, the first three clauses of this bill are required to take care of the fact that the existing provisions which they will replace have largely become inoperative in the last few years because of the different method of approaching the salary increase question, not only in the Civil Service, but to some extent in the armed forces and the R.C.M.P.

When the present provisions in these three acts were approved by Parliament we were operating on a basis whereby every few years there was what we might call a general salary or pay increase in so far as the three services were concerned, but now, particularly in the Civil Service and to some extent in the others, we have what we call a cyclical pay increase approach, whereby the Civil Service is divided into maybe four main groups. Each one of those groups is reviewed every two years, as a rule, to see whether a pay increase for that group is warranted; and with these increases, when granted, coming, say, every six months, the present provision, which you can see in the explanatory notes referring to an increase of general application, just is not operative. This means that the special contributions which the existing section contemplated had no authority for payment.

The CHAIRMAN: That is, both by the person who is the employee and by the Government?

Mr. CLARK: Well, I should perhaps explain that when a civil servant is contributing to the superannuation account he pays 6½ per cent of his salary, in the case of a man. When his salary is increased, of course, he pays 6½ per cent of the other salary, the higher salary. However, this is not sufficient to cover the additional pension liability arising out of this increase, and the act calls upon the Government to pay the amount of this additional liability.

The CHAIRMAN: On an actuarial basis?

Mr. CLARK: On an actuarial basis. The chief actuary of the Department of Insurance advises the Minister of Finance what this amounts to, and up until a few years ago the required contribution was made.

Coupled with this need to cover these deficits, which they really are, on the cyclical instead of on the general salary increase approach, the Minister of Finance, in an effort to even off the cost of these increases over the years, stated the Government's intention last year to provide that, instead of paying in a lump sum, the amount of this deficiency would be spread over the five years, starting in the year in which the increase was authorized. This would apply not only to the Public Service Superannuation Act but to the Canadian Forces Superannuation Act and the R.C.M.P. Superannuation Act.

Senator BROOKS: Do I understand you to say that it was every two years in the public service—that you made a review every two years?

Mr. CLARK: Each group is reviewed every two years. Some are reviewed more frequently, but at least every two years.

Senator BROOKS: But now they are amortizing it all over a period of five years—in the public service?

Mr. CLARK: That would be right.

Senator MOLSON: If the result of the periodic review of these different groups means that there is an increase every half year for some group or other, is there any advantage in spreading this over five years? There would be an almost constant amount necessary, anyway?

Mr. CLARK: The groups are not equal. There are two large groups and two small groups. Perhaps you could say it eases the burden initially. There is that point in it. It will, of course, keep fairly even throughout.

Senator MOLSON: What it would affect is the first four years?

Mr. CLARK: It is amortizing instead of paying it all in one year.

Senator HUGESSEN: As I understand it, these three sections relate solely to what one might call the actuarial calculation, not an increase in the Government's liability for pensions, resulting from an increase in salaries. Instead of making these payments gradually, they are spreading it over a period of five years.

The CHAIRMAN: Shall we move on to the other portions?

Mr. CLARK: Clause 4 is purely a remedial provision. In the amendments to the legislation in 1960 a provision was included whereby a person who was given erroneous information and failed to elect for certain service, was permitted to do so without additional penalty. We thought that we had covered all the possible cases in the 1960 amendment; but, as always happens, one other case turns up. This involved a person who had two periods of service in the Civil Service. The erroneous information related to service in between the two periods of contributory service, whereas the existing act related only to service before he first became a contributor. It is simply to permit the remedial provisions of the existing act to be extended to those odd cases where the difficulty arose in between two periods of contributory service.

Senator CROLL: Mr. Clark, where and under what circumstances can a man get erroneous information from your department?

Mr. CLARK: It so happens that the confusion arose because of the two periods of service. I believe that this man had got a return of contributions in respect of his earlier service. The officer who dealt with this unfortunately overlooked that this return had been made and the man was told that he had this prior service to his credit, where in fact he had not.

Senator ISNOR: Have you many cases like that which you have just quoted?

Mr. CLARK: The case in question is unique.

Senator ISNOR: One case?

Mr. CLARK: We made this general, just in case another turns up. This affects a person who is retiring actually in July. This would permit him to count the service which otherwise was denied to him on the original cost basis.

Senator CROLL: If nothing else, it proves the fallibility of the department, which is very human.

The CHAIRMAN: It is nice to know that. Clause 5.

Mr. CLARK: Clause 5 is required to meet the request of the Canadian Council of Resource Ministers to provide a pension provision for their staff. While a number of members of the staff are former federal civil servants, a number of them are also former provincial civil servants. Those who were former federal civil servants had been under the Superannuation Act. In looking for an appropriate pension plan, the council, after considering whether they might seek coverage under a provincial plan, decided that the federal plan was more suited to their purpose and asked that they be permitted to come under our act.

This would require the Council to pay the employer's share of the cost of the plan, in addition to the employees themselves paying their contributions, in other words, the matching contributions which the Government normally makes in respect of a civil servant would be made by the Council.

The CHAIRMAN: What is the source of funds of the Council?

Mr. CLARK: It comes from the various governments whose ministers constitute the Council.

The CHAIRMAN: In other words, provincial governments?

Mr. CLARK: That is right. In Ottawa, Mr. Laing is involved also.

Senator CROLL: Might I ask—I must admit my ignorance—who composes the Council of Resource Ministers? When was it formed?

Mr. CLARK: It was formed three or four years ago. I must admit I do not know the exact date, but it is relatively new. Their staff up to date has been actually without not only pension coverage but workmen's compensation coverage. That is the reason for paragraph (b) and also (c), which relates to the Flying Accidents Compensation Order. This will also permit them to come under the Group Surgical-Medical Plan for the Public Service of Canada—again with the employer's share of the contribution being provided by the Council.

The CHAIRMAN: The members, I understood you to say, were provincial ministers of resources, and the federal minister?

Mr. CLARK: That is right.

Senator SMITH (*Queens-Shelburne*): Who pays the wages or salaries for these people who work in the Council?

Mr. CLARK: The various governments make a contribution.

Senator SMITH (*Queens-Shelburne*): The contributions come from the provinces as well as the federal Government?

Mr. CLARK: That is correct.

Senator SMITH (*Queens-Shelburne*): In order to take the two together, you bring them under the federal Civil Service benefits?

Mr. CLARK: Yes. If it had been entirely a federal contribution, we could have brought them under the act without an amendment; the Governor in Council would have had the power to do so. But in view of the set-up of the Council, we had to have this statutory amendment.

Senator SMITH (*Queens-Shelburne*): Then, Mr. Clark, is this the situation, that their salaries are shared by the various jurisdictions?

Mr. CLARK: That is correct.

Senator SMITH (*Queens-Shelburne*): And also the amount of the employer's contribution to the fund is shared?

Mr. CLARK: That is correct.

Senator ISNOR: I am not quite clear in regard to this matter. This is a new group being brought in?

Mr. CLARK: That is correct.

Senator ISNOR: Would they automatically be included in the new pension scheme for the Government?

Mr. CLARK: The Canada Pension Plan?

Senator ISNOR: Yes.

Mr. CLARK: They will come under it next January, to the extent of the coverage that it provides. But it is not intended to cover, you know, the full pension prospects of an employee.

Senator ISNOR: That is what I wanted to know. I have a main question on this. Have you made a comparison of the costs of the plan which you now propose and the cost as coming under the new Canada Pension Plan?

Mr. CLARK: These employees will contribute under the Public Service Superannuation Act $6\frac{1}{2}$ per cent of their salary, and the Council will match that.

Now a proposal by the Government was outlined with reference to civil servants, and this would apply to this group as well. This is dependent upon legislation which the Government has stated it is its intention to introduce later this session. When it comes into operation it will provide for co-ordination or integration of the two plans whereby the over-all contributions will remain the same, but a portion of this $6\frac{1}{2}$ per cent which I have just mentioned, instead of going into the superannuation account, will be paid into the Canada Pension Plan. This means that while the $6\frac{1}{2}$ per cent payment remains the same, 1.8 per cent of the salary band from \$600 to \$5,000, will be directed into the Canada Pension Plan account.

Senator ISNOR: Thank you for the information you have given, Mr. Clark, but you have not answered the question in a definite way as to which is the more expensive.

Mr. CLARK: The two together will cost about the same amount or within a fraction of one per cent of the same amount as this would cost without the Canada Pension Plan.

Senator SMITH (*Queens-Shelburne*): Would you add to that statement some reference to the benefits which will flow from that use of the two plans?

Mr. CLARK: This integration will not, of course, provide the same benefit as would be had by adding the Canada Pension Plan completely to the benefits of the superannuation act. You could not expect that because of the diversion of contributions. The examples we have worked out show us that the most favourable case is the increase in the over-all pension on the present scale of the Canada Pension Plan to persons having a salary of \$5,000 and over with 10 years' service. The increase would be up to \$750 or more in the most favourable cases.

The CHAIRMAN: What you are saying is that resulting from integration a contributor will receive certain benefits from the Canada Pension Plan and under the superannuation act he will receive separate benefits. If you break them down, the benefits under the superannuation act after integration will be less by the amount payable under the Canada Pension Plan, but the amount payable under the Canada Pension Plan may show an increase over and above the amount previously paid out of the superannuation plan on the former basis.

Senator SMITH (*Queens-Shelburne*): I understand the principle has been announced that nobody will receive less as a result of integration.

Mr. CLARK: That is correct.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The committee adjourned.



Third Session—Twenty-sixth Parliament

1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

Complete Proceedings on Bills S-8 & C-104,

intituled respectively: "An Act to amend the Central Mortgage and Housing Corporation Act" and "An Act to amend the National Housing Act, 1954".

WEDNESDAY, MAY 26, 1965

WITNESSES:

Department of Citizenship and Immigration: The Hon. John R. Nicholson,
Minister, Central Mortgage and Housing Corporation: Mr. H. W.
Hignett, President; Mr. Jean Lupien, Vice-President.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Bouffard	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Kamloops</i>)
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lambert	Taylor
Crerar	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis
Flynn	Molson	Woodrow—(50).
Gelinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Tuesday, May 18th, 1965, and Tuesday, May 25th, 1965:

"Pursuant to the Order of the Day, the Honourable Senator Baird moved, seconded by the Honourable Senator Cook, that the Bill S-8, intituled: "An Act to amend the Central Mortgage and Housing Corporation Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Baird moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Inman, that the Bill C-104, intituled: "An Act to amend the National Housing Act, 1954", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Smith (*Queens-Shelburne*) moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 26, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Aseltine, Baird, Beaubien (*Provencher*), Blois, Bouffard, Burchill, Connolly (*Ottawa West*), Flynn, Gelinas, Gershaw, Gouin, Haig, Hugessen, Irvine, Lambert, Lang, Leonard, Molson, Pouliot, Power, Reid, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Taylor, Thorvaldson and Vaillancourt.—(26)

In the absence of the Chairman and on motion duly put it was resolved that the Honourable Senator Bouffard be elected Acting Chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Croll it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bills S-8 and C-104.

Bills S-8 and C-104, respectively "An Act to amend the Central Mortgage and Housing Corporation Act" and "An Act to amend the National Housing Act, 1954" were read and considered, clause by clause.

The following witnesses were heard: *Department of Citizenship and Immigration:* The Hon. John R. Nicholson, Minister. *Central Mortgage and Housing Corporation:* Mr. H. W. Hignett, President. Mr. Jean Lupien, Vice-President.

On motion of the Honourable Senator Molson it was resolved to report both said bills without amendment.

At 11.25 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF COMMITTEE

WEDNESDAY, May 26, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill S-8, intituled: "An Act to amend the Central Mortgage and Housing Corporation Act", has in obedience to the order of reference of May 18, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

PAUL H. BOUFFARD,
Acting Chairman.

REPORT OF COMMITTEE

WEDNESDAY, May 26, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-104, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of May 25, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

PAUL H. BOUFFARD,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, May 26, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill S-8, to amend the Central Mortgage and Housing Corporation Act, met this day at 10 a.m.

Senator Paul H. Bouffard in the Chair.

The ACTING CHAIRMAN: Honourable senators, we have two bills, S-8 concerning Central Mortgage and Housing Corporation, and Bill C-104, National Housing Act, 1954. We are very glad to have the minister here to explain the bill and to have the benefit of his presentation.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Senator POULIOT: Before the minister starts to speak, I wish to welcome him to this committee. I find that the minister is quite an extraordinary man in that he holds the portfolio of the most contentious department, that of Citizenship and Immigration. Besides that he has taken charge of the Post Office Department, and on top of that he has control of Central Mortgage and Housing Corporation. I feel he is an example to others, and I wish him every success.

I wish to draw to the attention of the minister the excellent speech delivered by Senator Donald Smith last evening when he sponsored the bill. He spoke as well as any experienced lawyer would have done.

Senator FLYNN: Is that a compliment?

Senator POULIOT: It is a great compliment.

Hon. J. R. Nicholson, Minister of Citizenship and Immigration: Mr. Chairman, honourable senators, I would like first of all to thank my old friend, Senator Pouliot, for his kind words. I have heard him at times when he was in the Commons, and he wasn't always as complimentary as he was today. For that reason I know that when he does hand out bouquets he is sincere, and his remarks come from the heart. I appreciate his remarks very much.

Mr. Chairman, honourable senators, throughout the years since the end of the Second World War frequent amendments to our National Housing legislation have been proposed in Parliament. As a general rule these amendments have been passed with the wholehearted support of all parties. From a careful perusal of the series of amendments over the years I can say that on each occasion, the amendments made in the last 20 years have represented a step forward in the Government's attempt to extend facilities for the ever-changing

and increasing demands for federal assistance in this vital social and economic field of housing and allied fields. Indeed, I am sure that most honourable senators present will recall that a little less than a year ago approval was given by Parliament—and probably most of you here today participated in the deliberations at that time—to some of the most comprehensive and most significant amendments to the National Housing Act that this country has ever had, amendments which are now finding reflection throughout the country in energetic proposals designed to meet the housing needs of low-income families and elderly people, and to change and rejuvenate depressed and out-dated sections of many of our cities and towns in all ten provinces. Today, however, the amendments contained in the bill now before you—that is, the bill to amend the Central Mortgage and Housing Corporation Act—do not concern the Housing Act itself, but, rather, the administrative agency, the Central Mortgage and Housing Corporation, that some years ago—I think it was 19 or 20 years ago—was brought into existence to administer this major piece of legislation.

I think you would all be interested to know that this is the first amendment to the Central Mortgage and Housing Corporation Act in 13 years. In 1952 there was a change made, but, notwithstanding the fact that the present scope of the operations of the Central Mortgage and Housing Corporation bears little, if any, resemblance to the responsibilities with which it was initially charged, the operations of the agency of Central Mortgage and Housing are still carried on largely within the framework of the original act.

I think that the success of that act over the intervening score of years bears out the wisdom of the Government of the day in establishing the federal housing agency as a crown company to operate this body, rather than as a Government department. That was really the beginning of the post-war crown companies, when Central Mortgage and Housing, Polymer Corporation and the others started to function in commercial activities.

As was pointed out by the Right Honourable J. L. Ilsley, who was then Minister of Finance and who introduced the legislation which led to the establishment of the corporation. "The operations of the federal Government in the field of housing are of a commercial or quasi-commercial character. Under the National Housing Act, the Government is 'in business'." And I might say, gentlemen, when you hear some of the figures I will give you within a minute or two, you will see it is in big business. "Bargaining and negotiations"—with provinces, with municipalities and with other bodies—"are involved. Risks have to be appraised". And Mr. Ilsley went on to say that quite obviously no minister of the Crown could carry out such an administration personally with the political and other involvements that would be associated with it.

You will recall that during the war years housing activity had understandably been severely curtailed, but, by the end of 1945, as Mr. Ilsley also stated when he introduced the legislation:

Canada is just at the beginning of a very large, possibly an unprecedentedly large, housing programme. . . . The present time is therefore a unique occasion on which to give the administration the form which will enable it to carry out its functions most effectively.

Now, Mr. Chairman, the anticipated demand for the housing program—to which the then Minister of Finance, Mr. Ilsley, referred in 1945—still continues, and it will continue to grow even greater in the years to come. But, in addition to the housing field, there have been many other great accomplishments in the particular activities covered by the housing act, and many of these—and I can say this in all sincerity—can be attributed to the enthusiastic and efficient manner in which the Central Mortgage and Housing Corporation has

risen to each challenge that was placed before it. Its tasks, I may say, have been many and they have been varied. In the initial post-war years the newly-created corporation became immediately involved in carrying out a number of special measures introduced by the Government to meet the emergency housing demands of that period—the pent-up demands of the war and returning soldiers who were married and had families to worry about. At the same time the mortgage lending functions it had assumed from the National Housing administration, which was formerly part of the Department of Finance, continued to expand as Canada's peace-time economy rose to new levels of prosperity.

While some of you have been following the housing field more closely than I have done may not be surprised at these figures, I can say I was literally astounded when the figures of this corporation were brought to my attention a little more than a year ago, when I became minister responsible for the administration of the Act. This increasing level of lending operations has continued on an ascending scale and uninterrupted throughout that whole period. In 1946, for instance, the total number of new houses built in Canada was 64,400, which was a record up to that time. Of these 7,300 only—less than 15 per cent—were constructed with the financial assistance of the National Housing Act, 1944. By comparison, the construction of new housing last year, 1964, reached an all-time high of new dwellings, 165,600 houses, nearly three times as many as in 1946, and these were built largely with loans provided under the National Housing Act. Fifty-eight thousand loans were handled by Central Mortgage and Housing as compared to 7,300 only in 1946.

Senator HUGESSEN: What is the percentage of difference there? You said 15 per cent in 1946. What was the percentage in 1964?

Hon. Mr. NICHOLSON: Fifty-eight thousand out of 165,600. I am not sufficiently good at figures.

The ACTING CHAIRMAN: Thirty-five per cent.

Senator LAMBERT: What was the total amount involved, do you know?

Hon. Mr. NICHOLSON: Pardon, senator?

Senator LAMBERT: What was the total dollars amount of mortgages involved in the 58,000 new houses?

Hon. Mr. NICHOLSON: I will give you the other figures here to supplement that.

In 1964, for the first time in five years—that is, since 1959—less than half the total loan volume was provided in the form of insured mortgages by approved lenders operating under the Act. During the year 1964 loans for nearly 30,000 dwellings were made directly by C.M.H.C. itself, under the direct loaning authority incorporated in the Act in 1947.

Recent years have seen still more extensive broadening of the facilities of the Act and the allocation to C.M.H.C. of many new responsibilities outside the field of housing, including the provision of direct financial assistance for an impressive program of university housing and sewage treatment projects. By the end of last month, for example, nearly \$275 million of federal funds had been committed in support of these two kinds of projects—that is, university housing and the sewage. Assistance to universities had been extended for more than 100 campus residences—on-campus housing developments is the way I think it was put in most of the legislation. They provide living accommodation for over 24,000 students in Canadian universities. In combatting the problems of soil and water pollution, loans have been provided to over 800 different municipalities in all ten of the provinces.

Last summer's amendments to the National Housing Act, to which I referred earlier, also promise to add substantially to the direct lending operations of the corporation, through the authorization of high-ratio loans to provinces and municipalities for public housing.

Today it is possible for a housing corporation of one of the provinces or a municipality established by or with the approval of a province, to borrow 90 per cent of the money it needs for public housing from the federal agency, Central Mortgage and Housing. This is an alternative to the federal-provincial partnership ventures and it has resulted in more than doubling units in the Province of Ontario—and I cannot give you figures for the other provinces, but I know that live action is under way in British Columbia, Alberta, Saskatchewan, Quebec and the Maritimes in this important field.

It is an alternative to the old federal-provincial joint arrangements to provide low-rental accommodation, which was not so satisfactory because the municipalities had to come in with such a large part of the funds needed. But, in addition—and this is a new phase—the Corporation is empowered to make loans to provinces and municipalities for urban renewal activities, supplementing substantially the federal aid that was formerly available in the form of outright contributions.

Dealing with the senator's question, I can give you more exact figures. The total amount now invested by the Corporation in its variety of direct lending operations now stands at approximately \$2 billion. The administration of this immense mortgage portfolio is in itself a tremendous responsibility for Central Mortgage and Housing Corporation. The Corporation also has under its administration some \$92 billion of assets in the form of agreements for sale and mortgages arising from the sale of real estate, as well as some \$65 million in C.M.H.C.-owned properties.

A further \$115 million of federal funds has been invested through federal-provincial agreements under the N.H.A., to which I have referred, and the Corporation is charged with the responsibility for administration of the mortgage insurance and guarantee funds which have now reached the sum of approximately \$140 million. So, you have \$2 billion and, in the figures I have just given you, another \$412 million.

The Corporation is also called upon to lend assistance to the Municipal Development and Loan Board in the administration of the federally-sponsored program to increase employment opportunities throughout Canada. You will recall that fund of \$400 million. \$250 million of the total has been earmarked already for this purpose, and has been taken up through loans by more than 1,300 municipalities for municipal improvement undertakings. The responsibility for keeping an eye on these activities is that of the Central Mortgage and Housing Corporation.

Central Mortgage and Housing Corporation is also closely allied with the Department of Labour in its efforts to spur employment in the construction industry through two successful winter works building incentive programs. During these programs—that is the 1963-64 and the 1964-65 programs, of which the latter came to end on April 15—more than 61,000 dwelling units of all types were built, and approved on final inspection, for an estimated average cost of \$15,800, or a total cost of more than \$900 million.

Think of what this has done to the economy. The amount is \$900 million, and over half of it has been spent on labour. But, think of what it has done to the responsibilities of the Corporation which is charged with the inspection and approval of loans.

I have summarized rather briefly, Mr Chairman, the growth of the activities of Central Mortgage and Housing Corporation under the National Housing Act—a growth which shows the tremendous forward surge of the Canadian economy in the past 20 years. Merely to recite those figures and to think of the ease and the dispatch with which these measures have operated gives you some idea of the responsibilities of the Corporation. But, Mr. Chairman, although this brief résumé may indicate the additional responsibilities undertaken by the

Corporation over the past two decades, it also indicates, as I have said, the responsibilities which will be coupled with an increasing demand.

As I have mentioned, Canada has experienced the largest quantity of residential construction in its history, but just entering the housing market is the large number of children born during and just after the war years. As a result, net family formation is expected to rise in the latter half of the sixties—that is, in the next five years—thus ensuring a steadily increasing market for housing. I think it is fair to ask ourselves, Mr. Chairman, whether our towns and cities are prepared to cope with this expanding population?

At the moment many or all of these urban centres—and I have visited most of them of any size in this country, such as Halifax, St. John's, Moncton, Saint John, Quebec, Montreal, Windsor, Hamilton, Toronto, Winnipeg, Saskatoon and Vancouver—are plagued with antiquated services, and a certain portion of the housing stock of every one of the cities I have mentioned is either badly decayed or quite unable to measure up to present day standards.

What is required is nothing less than a nationwide crusade to promote the whole process of urbanization in Canada. It will be necessary to receive in that crusade the active participation of all levels of government in this country. The reason why I say this is that, while the federal Government can provide technical assistance, and can act as banker for urban and housing renewal, the initiative must lie at the local level because these are the prerogatives of the provinces and of the municipalities. A crusade is needed to let the people know of the possibilities of the new federal legislation passed last year, and the complementary legislation that has been passed by most of the provinces.

To provide the facilities with which any province or municipality may undertake a comprehensive urban renewal program, Parliament last June sanctioned amendments to the National Housing Act. Under these amendments a broadened program of grants and loans will be available from the federal Government through Central Mortgage and Housing Corporation. This whole program has the approval of the ten provinces, so there is no federal-provincial conflict in this field.

I have just visited Charlottetown, Prince Edward Island and Fredericton, New Brunswick, and met with provincial and municipal authorities. We discussed the best way of implementing the new legislation. Before the end of this month similar discussions will be held with officials in Manitoba and Saskatchewan. Along with senior officials of Central Mortgage and Housing Corporation, I leave tomorrow night for Winnipeg to hold meetings there with the chamber of commerce and other bodies on Friday. We shall have on Saturday a provincial housing symposium, sponsored by the provincial Government, to which representatives of every city and town in Manitoba have been invited. On Sunday we go on to Regina, and on Monday will repeat the same process there.

These two meetings—that is, the Regina and Winnipeg meetings—will be a culmination of a cross-Canada tour where similar discussions took place in every province. In the Province of Ontario we had two such meetings, one in Toronto which was attended by 626 people, and another one in Sault Ste. Marie which was attended by people from the Lakehead and Northern Ontario.

The interest shown in each one of the nine symposiums already held to date assures me that we are about to enter a period in which most cities will undertake redevelopment programs—that is, urban redevelopment programs—surpassing anything anticipated a few years ago.

Urban renewal studies were made, when we had our first meeting in Halifax at the end of September last, in 42 or 43 different communities in Canada. Today this figure is approaching 70. That has happened in the intervening period of nine months, and requests are coming in every week for more studies.

Senator POULIOT: Mr. Minister, if you will permit me, may I ask if something is being done in the Province of Quebec?

Hon. Mr. NICHOLSON: Yes, may I deal with that later? I am almost through with my remarks. I shall deal with it at the end.

We are determined, Mr. Chairman—when I say “we” I mean the Government and the official body mentioned in this bill, Central Mortgage and Housing Corporation—that this developing surge of renewal activity or any other form of housing progress, will not be restricted by lack of adequate financing. To this end there is now before Parliament—before this committee in fact—a bill calling for a substantial upward adjustment in the amount of funds the federal Government stands ready to invest in support of these endeavours under the National Housing Act.

As you will see from the bill, the changes proposed will increase from \$6 billion to \$8.5 billion the maximum amount of loans for home-ownership and rental housing which may be insured under the Act. A further \$750 million is being requested for direct lending operations by Central Mortgage and Housing Corporation, thus increasing the maximum charge on the Consolidated Revenue Fund for this purpose to \$3.25 billion.

The bill also seeks to increase the amount of funds available for loans and grants relating to urban renewal from \$100 million to \$300 million. An adjustment from \$150 million to \$200 million has been requested for loans for university housing projects, and it is proposed to raise to \$150 million, the \$50 million allocation, which is the maximum amount now available for public housing developments jointly undertaken by C.M.H.C. and by a province or its agency.

It is within this context, therefore, Mr. Chairman, that this proposal for amendment to the C.M.H.C. Act of December 18, 1945—it still has that title—is before you.

The amendment asks in effect a reorganization of the executive establishment of the corporation. The senior executive of the corporation now consists of a president and a vice-president who, in addition to their normal day to day responsibilities, are members of the board of directors.

Now, with this list of responsibilities to which I have referred—the top executive consisting of a president and one vice-president—the operation of the corporation has now expanded to a position where each of its principal portfolios, lending and mortgaging operations, urban development and public housing, and administration and finance demands senior executive direction. It is proposed, therefore, in the bill you are now considering, to increase the senior management structure from one to three vice-presidents. It is not proposed to increase the number of members of the board of directors. We have a very efficient and hard working board, representing all parts of Canada, with the president and vice-president on that board.

The corporation members on the board, the president, Mr. H. W. Hignett, and the vice-president, Mr. Jean Lupien, will continue as proposed under the legislation as members of the board. The other two vice-presidents will not be members of the board.

In its short history C.M.H.C. has established an enviable record for efficiency in its day-to-day administration of the National Housing Act. In the opinion of the directors, endorsed by the Government, the proposal now contemplated will help materially to maintain this efficiency.

I therefore commend the bill to you, honourable senators, and ask for its early passing.

If you have any questions, I have with me the president of the corporation, Mr. Hignett, the vice-president, Mr. Jean Lupien, the solicitor, Mr. Wilson, and the secretary, Mr. Tapping. Among us we will try to answer any questions you may care to put to us.

Coming back to the question asked a few moments ago by Senator Pouliot, may I say that, while there has been activity in both the housing field and less activity in the urban renewal field, there has been activity; but I have been greatly encouraged, senator, by developments during the past two and a half months.

Not long ago, in company with the president and other officials of C.M.H.C., I attended a meeting in Quebec with the premier, members and representatives of his cabinet and the provincial housing committee and their advisors. It was a good meeting. We outlined to them the steps taken in New Brunswick, in Ontario, and other provinces. We received their assurance that Quebec was going to take a greater interest in housing, and that they were going to pass complementary legislation to take advantage of the benefits of the federal act that had been passed last June. In addition to that, we were taken on a very interesting drive, and spent the whole morning going around parts of the City of Quebec, and more particularly the parliamentary city, where there is a very comprehensive urban renewal study under way. They are doing their very best to preserve the beauty and architecture of these very lovely buildings and intend to modernize and improve them. Some may have to be removed, but, where it is possible to save them, it will be done. The study is now under way.

As I have said, we have the assurance of the Quebec government that the necessary complementary legislation will be passed at an early date.

If you wish, Mr. Chairman, I will deal with the bill; it is very short.

Senator HAIG: When did the corporation, Mr. Chairman, start selling by tender?

Hon. Mr. NICHOLSON: About three years ago—1962. It relieves the demand we have to make on the federal treasury, and it has worked quite successfully, actually.

Senator THORVALDSON: What is the total value of the mortgages sold by C.M.H.C.?

Hon. Mr. NICHOLSON: \$308 million.

Senator LEONARD: Can you tell us something about the insurance fund? You say it stands at \$140 million now. Would it remain the same as in the past?

Hon. Mr. NICHOLSON: Yes, there will be no change.

Senator LEONARD: No doubt from time to time consideration will be given to a reduction of the rate. Have you any record of losses charged against the fund, which in its present state is at \$140 million?

Hon. Mr. NICHOLSON: I will not go into detail. I will refer to Mr. Hignett, or one of the others. I may say though, that within the past year we have given serious consideration to a reduction in the rate. The basic reason that it has not been reduced is that we have run into some anomalous situations, such as Elliot Lake and Banting. We thought we were going to have a similar situation in Kitimat, British Columbia. In Elliot Lake losses amounted to hundreds of thousands of dollars. So it was felt that we had better let the thing level out before coming to any decision as to a reduction.

Senator LEONARD: As long as you keep it under consideration. It seems to me that there should be an element of equity in regard to amounts charged against loans to borrowers. Of course, the building up of the fund is a tribute to the excellent way in which the corporation has carried out its business. At the same time, they have reached a stage where the fund is ample to cover all anticipated losses.

Hon. Mr. NICHOLSON: I would say, Senator Leonard, that your remark is a very trite one, and one that concerned me when I took over. I spent some considerable time on that particular study and I satisfied myself that, until we

get those particular pockets straightened out and are able to work out a future formula for new mining towns, such as Potash communities in Saskatchewan, and others, it would be dangerous to change the rate at this time. However, it is under constant study, and when the time is ripe, a change will be recommended to the Government.

Senator LEONARD: I have one or two other questions. We had announcements in the last day or so of the loan to a university residence at Waterloo, which is not a residence of the same type as the others. Is this within the terms of the bill, or is it some change that is being made whereby loans would be available to residences for university students apart from the campus or the university ownership itself?

Hon. Mr. NICHOLSON: One of the amendments made last year made this possible. It permits campus co-operatives. In the history of the corporation, one or two of the most successful ventures in housing has been co-operative housing in Prince Edward Island and Nova Scotia, and that is one of the factors that influenced us in making these changes in the Act. This is the first loan of that nature.

Senator LEONARD: To clear the matter, some of these figures in the bill are cumulative, that is to say, the figure of \$8½ billion?

Hon. Mr. NICHOLSON: Are you referring to the National Housing Act?

Senator LEONARD: Yes.

Hon. Mr. NICHOLSON: Yes, they are cumulative.

Senator LEONARD: Most of the \$6 billion has been repaid, and the actual amount outstanding is the figure of \$2 billion, that you gave us before, and authority has been given to increase—

Hon. Mr. NICHOLSON: No, senator. Mr. Hignett will answer that.

Mr. H. W. Hignett, President, Central Mortgage and Housing Corporation: Senator, up to now the corporation has insured loans made by the approved lender with a total value of \$4 billion.

In addition, the corporation has made loans of approximately \$2 billion, so the total amount of loans which have been insured or are insurable is about \$6 billion. These are generally on 25-year amortization, and it takes 17 years to pay the first half of the loan, so while the \$6 billion will have been paid the sums outstanding will be still of the order of \$4 billion to \$5 billion.

Senator LEONARD: Thank you. That is the information which I wished.

Senator LAMBERT: May I ask a question about university residences, which was raised yesterday evening in the Senate. I refer to the relationship between the department groups and the federal authority in connection with this particular enterprise, by way of example. Is this characterized by a guarantee or an insurance of the C.M.H.C. by the province?

Hon. Mr. NICHOLSON: No. In the case of university residences, within the last decade or so the understanding has been reached between the two senior levels of government that higher education is a field in which the federal Government can intervene directly, whereas the normal school system is the responsibility of the provinces. Therefore, the federal Government now makes grants on a per capita basis to each student attending university. In the same manner, with the approval of the provinces—because these amendments were discussed by my predecessor, the late Jack Garland, with all ten provinces—provision is made now in the act for loans to the universities themselves or alumni associations or co-operatives or any non-profit organization that has an interest in this matter. These loans are made to the university or the co-operative or co-operation that applies for the loan. It is a loan backed by the C.M.H.C.

Senator LAMBERT: This category is separate entirely from the category originally intended by C.M.H.C.?

Hon. Mr. NICHOLSON: That is correct.

Senator LAMBERT: This point was discussed a few years ago by one of our Senate committees, which declined the approach of the present head of the Board of Broadcast Governors, Dr. Stewart, who was the chief advocate of this expenditure on residences for university students. Eventually, the committee reconsidered it.

Hon. Mr. NICHOLSON: They reconsidered it and it has been in effective operation—not just under the present Government.

Senator LAMBERT: What would you consider to be the deciding factor?

Hon. Mr. NICHOLSON: The tremendous population explosion in the universities.

Senator SMITH (*Queens-Shelburne*): Just to get that part of the record straight, I think I should point out that the report of the Finance Committee of 1958 did recommend that consideration be given to the matter of housing students, but the committee particularized the device of having insured loans applying to universities who would get residences. Then the succeeding government has gone on to a greater extent and the result has been a laudable one, to make grants to universities.

Hon. Mr. NICHOLSON: They are not grants, they are loans, long-term loans.

Senator SMITH (*Queens-Shelburne*): Yes, long-term loans.

Hon. Mr. NICHOLSON: They are made to the university association or alumni association or non-profit association that has taken this initiative in university housing.

Senator LEONARD: I think there is a limit. Is it 60?

Mr. HIGNETT: It is 90 per cent of the cost, and there is a limit of \$7,000 per student housed.

Senator FLYNN: I would like to say I disagree with the minister, respectfully, when he says that higher education is a field that has been accepted by the provinces as being under federal jurisdiction. I would like to point out that the making of a loan to a university for building purposes is not necessarily interfering in education.

Hon. Mr. NICHOLSON: It is housing. My statement may have gone too far; but I think that all of the provincial governments have recognized that the federal Government can participate in higher education to a higher degree.

Senator FLYNN: They may have accepted it now. Are we discussing the two bills at present, Mr. Chairman?

Hon. Mr. NICHOLSON: Actually, I concluded my remarks on the C.M.H.C. bill with the reference to the National Housing Act as an instance of the greater responsibilities of the officials of the C.M.H.C. and the necessity for re-organization. I thought it would be helpful, therefore, if we dealt with both together and you could put your questions on each bill, if you have any, as they are considered separately.

Senator BURCHILL: I would like to ask a question about the facilities for housing for elderly people. Is there an amendment which permits that?

Hon. Mr. NICHOLSON: Yes.

Senator BURCHILL: Is there any restriction on the valuation?

Hon. Mr. NICHOLSON: There are different types of housing, under the Act, for senior citizens, depending upon whether it is a federal-provincial venture, or whether it is a public housing venture started by the province itself or an agency of the province. The subsidies are substantially the same. There is

provision for subsidies if the senior citizen's home does not pay, and for the apportionment of the subsidy between two or three levels of government. The federal Government is in all of them I can assure you, to a minimum of 50 per cent.

Senator BURCHILL: Voluntary organizations are interested, such as Rotary and the Kiwanis Club. I was particularly interested in an Anglican church in the Province of New Brunswick. Some very public spirited laymen devised a scheme for housing elderly people there and they bought property in Sussex. They sold the idea to the Synod. Of course, the scheme sold to the Synod was to use Central Mortgage. They thought they had worked it out with Central Mortgage. But after they got started, the scheme fell through as far as C.M.H.C. was concerned and they had to resort to private finance. That was a question, I understand, of valuation. They are building a court of apartments for elderly couples.

Hon. Mr. NICHOLSON: Senator Burchill, it is an excellent idea, and it is not peculiar to our native Province of New Brunswick. Other provinces have had fairly successful schemes and have made very important contributions in this field. Other churches have taken part, the Roman Catholics, the Presbyterians and the United Church. This particular instance of which you speak was one in which there was a legal difficulty. I would ask Mr. Hignett to deal with the Sussex venture.

Mr. HIGNETT: In the case of the Sussex project, the Anglican Church put a proposal forward, under section 16 of the act, which is the limited dividend section of the act. Loans under this section are 90 per cent loans, the lending value being determined by the corporation. But loans of this amount require the charitable organization concerned—in this case, the church—to enter into an operating agreement with the corporation, under which they have to rent the accommodation for rents that are established at the beginning and agreed upon by both the church and the Corporation. Also, the accommodation is to be rented to persons of low income, who are not necessarily Anglicans, and whose maximum income is prescribed in the operating agreement. They are required also to submit to the corporation an annual statement showing that they are abiding by the terms of this agreement.

In this case, Mr. Senator, the bishop felt that this was quite an onerous agreement, and he did not desire to enter in such an agreement with the C.M.H.C.

As an alternative, the corporation has power to make direct loans under ordinary commercial rental provisions of the National Housing Act. So we cancelled the limited dividend section loan. We did make a loan to the church under the ordinary commercial section of the act, which is on a lower level, and at a higher rate. In this case, this type of loan seemed to be more acceptable to them.

Hon. Mr. NICHOLSON: We ran into another case. In this case the bishop was told that there had to be a corporation, that the C.M.H.C. could not make the loan to an institution by name unless it was a body corporate. We went to the extent of advising how it could be done economically under the Societies Act. He decided, in the end, the church would build it themselves and did not ask for the loan. Loans are being made, however, to church bodies and more particularly to service clubs. Service clubs have done an outstanding job right across Canada. I remember particularly two housing units in Winnipeg put up by service clubs. Sometimes the ordinary builders leave no trees standing. A service club will go out and take a greater interest in natural beauty than a cold-blooded builder who is seeking the greatest return for the dollar. He will be more interested in that than the more attractive units.

Senator SMITH (*Queens-Shelburne*): Section 16, referred to a moment ago, is that the new section that came into effect last June?

Mr. HIGNETT: That is the old one. The new section is section 16A which limits the loans to charitable and non-profit corporations. These are corporations that take no dividend. Section 16, which is a limited dividend section, allows the owners to take a dividend of 5 per cent of their investment in a project.

Senator SMITH (*Queens-Shelburne*): Did this question arise in connection with the act as it was previous to last June, and this whole thing was never brought up in terms of the new act?

Mr. HIGNETT: That is right. Both sections require a similar operating agreement.

Senator LEONARD: Is there still a line of demarcation between the loans made directly by Central Mortgage and Housing, and the loans made by lending institutions? Originally the intention was that direct lending by Central Mortgage and Housing was in the field of geographical areas and the class of mortgage that would not be made by lending institutions. Is there still some line of demarcation?

Hon. Mr. NICHOLSON: Mr. Lupien may be able to answer that.

Mr. Jean Lupien, Vice-President, Central Mortgage and Housing Corporation: In the direct lending field, we act as a lender in the absence of a desire on the part of a lending company, or in the absence of funds at that time. The facilities for direct lending are available on a national basis and not only on a geographical basis, but it does occur more often in certain areas than in others. There is no direction that it shall be limited, but it just so happens, as is also the case with, for example, life insurance companies, that they are more active in certain centres than in others. However, the fact is that direct lending facilities have been made more use of in certain parts of our country.

On the other hand, on occasions when there appears to be a uniform or constant lack of lending facilities on the part of our lending institutions then our direct lending facilities are made use of on a national basis in the same ratio. This happened, for example, two years in a row when the Government introduced the winter bonus program for house construction. The bulk of financing for these two programs, as the minister pointed out, has been through the direct lending facilities to an amount of somewhat more than half a billion dollars in these two periods of five months.

Senator LEONARD: This is a continuation of the policy in effect for many years now.

Hon. Mr. NICHOLSON: That is correct, but this is a special application of that policy so far as winter works are concerned.

Senator THORVALDSON: With respect to Bill S-8, and regarding the two new vice-presidents, will they be taken from the present personnel of the corporation or will they be appointed from outside, and is it intended that they shall be full-time employees of the corporation?

Hon. Mr. NICHOLSON: Yes, but actually this is a matter of internal management. The Government, while it has the right of veto, is guided in these appointments largely by the recommendations of the board of directors of the corporation itself. I would think in this case, because of the peculiar nature of the corporation's activities, they will be appointed from the corporation itself. But that is for the directors to decide.

Senator THORVALDSON: Will their duties be specific? For example, will there be a vice-president in charge of so-and-so?

Hon. Mr. NICHOLSON: Yes. As I said this morning there are three major fields of activities in the corporation. The first is lending and mortgage operations, and Mr. Lupien, the senior vice-president, is a specialist in that field. The second is urban development and public housing. Mr. Hignett is a specialist in that field and was so before he became president. The third field is administration and finance. So there will be a vice-president in charge of mortgage and lending operations, and a vice-president in charge of urban development and renewal, and a vice-president in charge of administration and finance.

Senator THORVALDSON: That will follow closely the pattern in private organizations where specific officials cover various phases.

Hon. Mr. NICHOLSON: I was associated for 10 years with another crown corporation, the Polymer Corporation, and for the first 10 years it had one president and two vice-presidents, and now it has ten vice-presidents. It is the same as the National Research Council or the Canadian National Railways.

The ACTING CHAIRMAN: Do you think you have enough with the three now appointed?

Hon. Mr. NICHOLSON: Yes, because those new executive directors will be appointed to cover these various fields. One vice-president may have more than one executive director under him.

Senator FLYNN: In connection with the appointment of the two additional vice-presidents, I understand that only one will be a member of the board of directors. I read in section 5 that the vice-president designated a member of the board by the Governor in Council would take over in the absence of the president. Therefore there will be one vice-president who will be the second officer of the corporation.

Hon. Mr. NICHOLSON: That is correct.

Senator FLYNN: Since it is not provided that the two additional vice-presidents will have anything to do on the board and will not act on the board and will not replace the president or vice-president, I wonder if the idea was not really to appoint two administrative vice-presidents, which would leave you with one vice-president, and two administrative vice-presidents. It seems to me to be rather confusing to have three vice-presidents only one of whom is really a vice-president of the corporation, with the others having only administrative responsibility. To me the bill as drafted does not convey this idea which is otherwise apparent.

Hon. Mr. NICHOLSON: Although I appreciate your point of view, I must say that I thought the draftsmen had done an excellent job in drafting this bill. However, you must understand, by way of background to the bill, that the president and vice-president are permanent officials of the corporation, and the three other directors represent the civil service, two from Finance and one other, the President or Secretary of the Privy Council. If two more vice-presidents were brought in it would be necessary to increase the number of outside directors proportionately. As it now stands the section says:

The Board of Directors shall consist of the President, a Vice-President who shall be designated by the Governor in Council and eight other members, three of whom shall be selected from the public service of Canada and five of whom shall be selected from outside the public service of Canada.

Mr. Lupien has been designated as vice-president. The vice-president appointed by the Government under this section is automatically a member of the board, and he is the only one who is a member of the board. In the sections that follow, section 4 and section 5 of the act, the vice-president appointed by the cabinet or by the Government automatically becomes president and takes

over the responsibilities of the president in the absence of the president. This one man is unique.

Senator FLYNN: We are in full agreement, but in my suggestion we did not need a new section 6. It was easy to amend section 7 by adding at the end of paragraph 1:

The Board, with the approval of the Governor in Council, shall appoint and fix the salaries of two administrative Vice-Presidents . . . And then you would continue:

The President, Vice-President and two Administrative Vice-Presidents hold office during good behaviour . . . etcetera.

The President, Vice-President and two Administrative Vice-Presidents on the expiration of their term of office may, if eligible, be re-appointed.

You do not need sections 4 or 5 at all. That would have been much clearer to me.

Hon. Mr. NICHOLSON: But you would have had to amend several other sections as well. You would have had to amend section 7 of the act as it now stands.

Senator FLYNN: You would have only to amend section 7, and keep section 6 because it is another matter. The bill would have only three sections instead of seven, and you would still achieve your purpose.

Hon. Mr. NICHOLSON: Although I am a lawyer by profession and practised for several years, I have reached the stage in my life where I prefer to leave it with the experts. This is what the experts came up with, and I think they have done a very good job.

Senator LEONARD: Perhaps I might follow up Senator Flynn's question on the matter Senator Hugessen and I were discussing. Is there somewhere else in the act the power to designate the duties of these two additional vice-presidents? How are their functions prescribed? Is there the power under the act generally to do so?

Hon. Mr. NICHOLSON: The board has the power, under the internal management of the company, to do that. All we want is to have them appointed, because it is conceivable that if anything should happen to one of these gentlemen, Mr. Lupien has such qualifications. If he should succeed to the presidency or take over these responsibilities there might have to be a re-allocation of duties. Just as in Polymer, at one time we had a vice-president in charge of research. Then we had a vice-president in charge of research and sales.

Senator LEONARD: All we are concerned with is you are satisfied it is not necessary to prescribe the duties of these extra two vice-presidents in the legislation?

Hon. Mr. NICHOLSON: Not at all. We prefer not to. It would tie their hands.

Senator FLYNN: If my memory serves me right, Mr. Minister, there was a crown corporation which amended their law—

Hon. M. NICHOLSON: Yes, the Overseas Telecommunications Corporation.

Senator FLYNN: They amended their law, I think, last year, and it made the positions of administrative vice-presidents who had nothing to do in the board of directors. But it seems to me the Governor in Council might switch, within the three vice-presidents, who is going to be the real second officer of the corporation.

Hon. Mr. NICHOLSON: There is only one vice-president who is a member of the board of directors, and that vice-president automatically becomes president if the president is ill or away.

The ACTING CHAIRMAN: The designation can be managed by the corporation.

Senator FLYNN: It would be a clumsy title to say he is vice-president designated by the Governor in Council. Just imagine if he had to sign his name with his title.

Hon. Mr. NICHOLSON: With all due respect, he would not have to so sign. It is not uncommon in banks, for instance, to have a vice-president a member of the board of directors and four vice-presidents who are not. The same thing is true of the National Research Council and the Polymer Corporation.

The ACTING CHAIRMAN: Usually, I think, in those cases the senior vice-president has general supervision over all the affairs of the company, and the other vice-presidents are connected with a certain part of the administration.

Senator REID: With regard to section 7(2):

The President and Vice-Presidents hold office during good behaviour for a term of seven years but are removable by the Governor in Council, on a resolution of the Board, for permanent incapacity ...

The ACTING CHAIRMAN:

...or for other cause.

Hon. Mr. NICHOLSON: That is not new, senator.

Senator REID: It is not?

Hon. Mr. NICHOLSON: No, it is not new. It is in the old act, and it is not uncommon in other similar statutes.

The ACTING CHAIRMAN: I understand that the senior vice-president will have a certain amount of supervision over the affairs of the company?

Hon. Mr. NICHOLSON: He is "No. 2 man", and it is proposed that he will get a higher salary than the other proposed vice-presidents. Or course, it is conditioned upon this body and the House of Commons approving the legislation.

Senator MOLSON: Although I have the deepest respect for our legal confrères, might I suggest this discussion on the structure conforms to the ordinary corporate practice throughout this country and the United States, and there is nothing unusual or exceptional in the fact that one or other of the vice-presidents is a member of the board and the others are not.

Senator FLYNN: I am in full agreement with my colleague. I was not discussing that at all, with all due respect.

Senator MOLSON: With all due respect, if you start to designate in the bill Vice-President (General Administration) that position would have to be so designated, and it would cause confusion when the responsibilities had been set out by the board of directors perhaps in one other sphere of the company, other than general administration—whether finance or loans and mortgages, and so on. It seems to me, to take it as it stands in that particular aspect is quite clear.

The ACTING CHAIRMAN: As a matter of fact, in section 11 of the act it states:

The Board shall manage the affairs of the Corporation and conduct its business and may for such purposes exercise all powers of the Corporation.

So it gives the board of directors all the powers necessary to make any kind of appointment they want.

Hon. Mr. NICHOLSON: I think this might help Senator Flynn. I can understand his difficulty. We want to make use of the services of one of our able executives, Mr. Lupien. The corporation's activities are not such as to merit an executive vice-president. We want three vice-presidents, but in the absence of the president for any cause we want one of those people to be the boss, and that happens to be Mr. Lupien.

Senator FLYNN: That is what I am trying to clarify in the act, because it is already mentioned.

Hon. Mr. NICHOLSON: I think it is already clear in the act.

Senator SMITH (*Queens-Shelburne*): If we have finished with the discussion of that point, I wonder if I could turn to Bill C-104 for a moment?

The ACTING CHAIRMAN: To the other bill?

Senator SMITH (*Queens-Shelburne*): Yes, the other bill, provided we have finished that discussion.

The ACTING CHAIRMAN: Is there any other question on Bill S-8?

Senator SMITH (*Queens-Shelburne*): In the discussion last evening in the Chamber, Senator Grosart raised a point I would like to bring to the attention of one of the witnesses before us. He questioned the use of the words "have been issued" in section 13 of the National Housing Act, and his question was whether the spending to date under the National Housing Act provisions had already exceeded the \$6 billion authorized prior to the amendment.

Hon. Mr. NICHOLSON: I think, Senator Smith, that has already been answered by Mr. Hignett in answer to a question put by Senator Leonard, when he gave the figures of the breakdown of guarantees to other lending institutions, approved lenders, by the corporation itself. It is just under the \$6 billion, but it is coming so dangerously close to it we need additional funds very quickly to replenish the treasury.

Senator SMITH (*Queens-Shelburne*): My purpose in having it stated again was to tie it in with respect to Senator Grosart's inquiry so he could see that that it was dealt with in committee.

Hon. Mr. NICHOLSON: I am quite sure that if there is a transcript of our remarks this morning, Mr. Hignett's answer is there, Senator Smith.

Senator SMITH (*Queens-Shelburne*): The other matter I would like to bring to the attention of the witnesses has to do with the remarks made by Senator Gladstone in the chamber, when he asked questions as to what was being done under the act in the way of housing for the Indian reserves. Will you make a short statement on that?

Hon. Mr. NICHOLSON: There is a very serious difficulty—and I speak here not as the minister responsible for the administration of the act but as Superintendent General of Indian Affairs. We have a unique problem in that lands on Indian reserves are owned by the Crown. The Indians cannot give a mortgage on the lands. We now have a group working to find some other solution that will make possible loans for the building of improved housing on Indian land. Under the present act this is impossible because the land is held by the Crown.

The CHAIRMAN: Could you not take a mortgage on the building itself instead of a mortgage on the building and the land? That is done in some instances where there are different owners of the house and the land.

Hon. Mr. NICHOLSON: All I can say, Mr. Chairman, is that the matter is under active study.

I might say this, Senator Smith—and you can pass it on to Senator Gladstone—that while we have this difficulty, two or three constructive suggestions have been made, and in addition we are carrying out an experimental housing

program for Indians and metis who have left the reserve. This is an experimental program in Northern Saskatchewan, and if it is successful it will be repeated in other provinces. However, we have to find a solution to the technical difficulty we are faced with having regard to the fact that the Crown cannot mortgage to itself.

The CHAIRMAN: Are there any other questions?

Mr. LUPIEN: Mr. Chairman, I should like to amplify the comments of the minister about loans to universities because of the provincial interest in this field. Even though this project has been discussed with the provinces only two of them have enacted legislation, or taken some participation in this field so as to maintain their right over it.

The Province of Quebec has requested each university to transmit its requests for loans through the provincial Department of Education, and in addition it is guaranteeing the amount of the loan obtained through Central Mortgage and Housing Corporation.

The Province of Ontario has recently instituted a grant, which is mandatory, in the amount of \$1,400 per student house. This grant has to be taken up by all institutions taking advantage of the lending facilities, and it has had the effect of reducing the permissible mortgage under the National Housing Act.

The CHAIRMAN: It is a grant, and not a loan.

Mr. LUPIEN: Yes, it is a grant.

Hon. Mr. NICHOLSON: I might say, Mr. Chairman, for the information of those who are interested, that we have made more loans for universities in the Province of Quebec than in all the other provinces put together, and that has been done with the approval of the government of that province.

The CHAIRMAN: Are there any other questions?

Senator LEONARD: Perhaps I should add, Mr. Chairman, a further word of explanation with respect to what the vice-president has said. I am on the University Affairs Committee of the Province of Ontario which makes these grants. It is true that there is a maximum of \$1,400, but that is also governed by a percentage of the amount that Central Mortgage and Housing Corporation itself will lend, and, of course, it is not mandatory in the sense that the university has to take it. It is a permissible grant on the part of the province. Based largely on the fact that in charging the student the cost of the amortization of the Central Mortgage and Housing Corporation loan it was felt that the amount required was too large and, therefore, the cost of the residence would fall back on the university's revenues proper, and that this was a field in which the Province of Ontario could properly assist by directing the grant towards the university residence. That is the basis upon which it is being done.

The CHAIRMAN: Are we ready to proceed with a clause by clause study of the bill?

Hon. SENATORS: Agreed.

The CHAIRMAN: We shall take Bill S-8 first. Clause 1, striking out paragraph (j) of section 2. Does clause 1 carry?

Senator FLYNN: Mr. Chairman, I would be prepared to move an amendment that clauses 1 and 2 be deleted, but that would entail amendments to other parts of the bill. If the view is taken that we cannot improve this bill then I will stay put.

Senator LAMBERT: You can move your amendment next year.

The CHAIRMAN: Shall clause 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 2, with respect to the board of directors?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 3, the appointment of president and vice-president?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 4, as to the executive committee?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 5, absence or incapacity of president and vice-president? Shall this clause carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Clause 6, annual statement of account to Minister. Shall this clause carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: We come now to Bill C-104, which is being dealt with together with Bill S-8. Is it the wish of the committee to go through it clause by clause? There have been no comments made against the bill. Shall the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Hon. Mr. NICHOLSON: Thank you, Mr. Chairman, and thank you, gentlemen.

The committee adjourned.



Third Session—Twenty-sixth Parliament
1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

Complete Proceedings on Bill C-98,

intituled: "An Act to make provision for the retirement of members of the Senate."

TUESDAY, JUNE 1, 1965

WITNESSES:

Department of Justice: Mr. D. S. Thorson, Assistant Deputy Minister.
Department of Finance: Mr. Hart D. Clark, Director, Pensions and Social Insurance.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Bouffard	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Kamloops</i>)
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lambert	Taylor
Crerar	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis
Flynn	Molson	Woodrow—(50).
Gelinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 27th, 1965:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Lambert, for the second reading of the Bill C-98, intituled: "An Act to make provision for the retirement of members of the Senate".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Hugessen, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 1, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Aseltine, Baird, Beaubien (*Bedford*), Beaubien (*Provencher*), Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Dessureault, Fergusson, Flynn, Gershaw, Gouin, Haig, Hugessen, Irvine, Isnor, Kinley, Lambert, Lang, Leonard, Macdonald (*Brantford*), Paterson, Power, Reid, Roebuck, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Taylor, Thorvaldson, White, Willis and Woodrow. (34)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

In the absence of the Chairman and on Motion of the Honourable Senator Connolly (*Ottawa West*), the Honourable Senator Leonard was elected Acting Chairman.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-98.

A letter was read to the Committee by the Acting Chairman from the Honourable Senator Crerar with respect to Bill C-98.

A letter was read into the record by the Honourable Senator Connolly (*Ottawa West*) from the Hon. E. J. Benson, Minister of National Revenue with respect to the registration of the pension plan for the purposes of the Income Tax Act.

Bill C-98, "An Act to make provision for the retirement of members of the Senate", was considered clause by clause.

The following witnesses were heard:

Department of Justice: D. S. Thorson, Assistant Deputy Minister. *Department of Finance:* Hart D. Clark, Director, Pensions and Social Insurance.

The Honourable Senator Flynn Moved that clause 17 be left out.

The Motion was declared lost.

The Honourable Senator Flynn further Moved that clause 15 be amended by leaving out lines 10 to 15 inclusive, with the exception of the word "or" on line 15.

The Motion was declared lost.

The Honourable Senator Flynn further Moved that subclause (1) of clause 16 be left out and the following inserted: (15) "Where a person who was granted an annuity under Section (15) dies, or when a Senator dies in Office before the expiration of the delay provided in paragraph (a) of Section 15, the Governor in Council may grant to his widow an annuity equal to one-third

of the annuity provided in said Section 15, to commence immediately after his death and to continue during her natural life." On question raised, the Acting Chairman ruled the Motion out of order.

The Honourable Senator Flynn further Moved that clause 17 be amended by adding paragraph 3 as follows: "When a Senator dies leaving no widow, or leaving a widow to whom no annuity is payable under the terms of Section 16, there shall be remitted to the estate of this Senator a sum representing the total of his contributions made under the present clause." On question raised, the Acting Chairman ruled the Motion out of order.

On Motion duly put it was Resolved to report the said Bill without amendment.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, June 1, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-98, intituled: "An Act to make provision for the retirement of members of the Senate", has in obedience to the order of reference of May 27, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

T. D'Arcy Leonard,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 1, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-98, to make provision for the retirement of members of the Senate, met this day at 10 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, 10 o'clock is striking and I see a quorum. I call the meeting to order. We have before us for consideration Bill C-98.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The ACTING CHAIRMAN: I have been handed a letter which is addressed to the Honourable Salter Hayden, Chairman of this committee, by Senator Crerar. I have not read it yet. Is it your wish that I read it to the committee?

Senator ROEBUCK: Yes.

The ACTING CHAIRMAN: The letter is as follows:

May 25, 1965.

Dear Senator Hayden,

In a few days the so-called Senate Reform Bill—which is no reform at all—will be before your committee.

No principle can be found upon which this legislation is based, since some people are in decline at 60 years of age and others at the peak of their powers at 80.

However, if the bill is accepted by The Senate there are definitely a few changes that should be made. In the *Toronto Star* of May 18 the following report of the conclusion of the debate in the Commons appears: "The New Democratic Party, which wants the Senate abolished, ended a hard fought battle against the bill yesterday *after winning* a concession from the government—to make senators pay 6% of their Income into a Pension Fund." This means, I take it, that senators who opt out and take the retiring allowance, and, more particularly, those senators who decide to continue as active senators, will be compelled to contribute 6% of their indemnity to a Pension Fund from which they will never draw a dollar of benefit. This is a clear violation of the terms of their appointment. If Parliament lightly disavows engagements, honourably made and honourably accepted in the past, where are we heading for? It appears to be quite clear this unwise provision *was not* in the bill when first presented, but was introduced to appease the socialists in the Commons and so get the measure through with. If The Senate accepts this, it humiliates and demeans itself. It will be laughed at and will

deserve to be laughed at. This provision should be stricken out of the bill, and there should be no false modesty about it.

There is room for some real reform in The Senate and before long we should address ourselves to it.

I shall be grateful if you will present these views to the committee.

Yours very sincerely,

"T. A. Crerar"

Then over the page there is a postscript:

It would be just as logical to pass an amendment that senators who continue on should pay annually 5% of their indemnity to the Red Cross.

We are all sorry that Senator Crerar himself is not here to express his own views, but we know that he would express them just as forcibly as he has done in this letter.

The ACTING CHAIRMAN: We have present with us Mr. D. S. Thorson, who is familiar to all of us as the Assistant Deputy Minister of Justice, and with him is Mr. Hart D. Clark, Director, Pensions and Social Insurance, Department of Finance. These gentlemen are here to give us their explanations of the bill, and, subject to your wishes, I would suggest that we proceed to deal with the bill section by section, asking for an explanation where required on each section as we go along. Some sections are more controversial than others; there are some that should be read together as being a plan. We can set aside any section which it appears should be stood until we consider any further sections. However, I think it would be more orderly if in the meantime we proceed section by section and get the explanations as we go along. Is that agreeable?

Senator ROEBUCK: Right on that point, Mr. Chairman, may I protest against the explanatory notes to this bill. They are very poorly drawn. They are not sufficient to be understood.

The ACTING CHAIRMAN: The explanatory notes are not explanatory enough?

Senator ROEBUCK: No, they are not good enough.

The ACTING CHAIRMAN: Senator Flynn?

Senator FLYNN: Mr. Chairman, I am not too sure that the procedure you suggest is appropriate. I think Part I, which contains only one section, is all right, but in the case of Part II and Part III I think it would be appropriate to examine each section separately. I think we should have an overall view of the system which is proposed in Part II, and then an overall view of Part III, before we deal with each section separately.

The ACTING CHAIRMAN: Would it meet with your views, Senator Flynn, if, in any case, we dealt with Parts I and II, and then when we come to Part III. If you want to debate the bill in general we will do so. Is that agreed?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: In dealing with section 1 perhaps Mr. Thorson will give us the benefit of an explanation.

Mr. D. S. Thorson, Assistant Deputy Minister of Justice: Mr. Chairman, I do not know that there is much I need say about this. The section is largely self-explanatory. The existing provision of the British North America Act, whereby a senator holds his place in the Senate for life, is changed to provide that a senator summoned to the Senate after the coming into force of the bill will hold his place in the Senate only until he attains the age of 75 years. This does not disturb the tenure of office of anyone appointed to the Senate before the coming into force of the bill.

Senator REID: Why is it stated in the bill that subject to the provisions of this act a senator shall hold his place in the Senate for life?

Mr. THORSON: Of course, this would also continue to apply to those persons who are now members of the Senate. So that the exception is only as regards persons summoned to the Senate after the coming into force of the bill.

The ACTING CHAIRMAN: Those words apply to us here, and mean that there is no change in so far as we are concerned with respect to the provisions of section 1. It is only as to those appointed after the act comes into force that section 1 applies.

Senator ROEBUCK: Mr. Chairman, I would like to restate my position in regard to this matter of retiring senators at 75. I never have agreed with it, and I do not agree with it now. I do not think it will benefit the Senate or, that it will make the Senate more effective; indeed, it will make it less effective. The essential condition in the Senate is the independence of its members, and by retiring them at 75 an additional factor is introduced into their thinking; that is to say, what they are going to do after they retire. In consequence they will be more approachable than they are today. At the present moment, we having nothing to hope for and nothing to fear. If we are to retire at 75, we have to think of what we are to do after 75, and that leaves us open to approach. I am opposed to it. I do not think it will do the Senate any good. It will make the Senate less independent and less bold in its actions.

While there are parts of the bill with which I strongly agree, I want my position thoroughly understood, and I am going to restate it in the house, that I am opposed to the compulsory retirement.

The ACTING CHAIRMAN: Is there any further discussion on section 1, which deals with future appointments of senators? Are you ready for section 1? Shall it carry?

Hon. SENATORS: Carried.

Senator ROEBUCK: On division!

The Acting CHAIRMAN: On division. Section 2 is simply a draftsman's clause to redefine the British North America Act Acts, 1867 to 1965, as this act will then become a further amending act. Shall section 2 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 3 is actually purely verbiage, but if the members of the committee want to debate the plan which is set out in Part II and Part III, for that matter as well—section 3 provides a convenient way of doing it, or we can still continue to get the clauses out of the way which are not controversial.

Senator FLYNN: I would like the purposes of Part II to be generally outlined.

The Acting CHAIRMAN: Is that agreeable? Shall we deal with Part II at the present time, and go on and deal with Part III later?

Senator ROEBUCK: I think we should hear from the officials.

The Acting CHAIRMAN: Mr. Clark?

Mr. Hart D. Clark, Director, Pensions and Social Insurance, Department of Finance: Mr. Chairman, the primary purpose of Part II of this bill is to amend the existing Members of Parliament Retiring Allowances Act, so that the references in it would be appropriate to senators who are appointed after this bill has become law. The changes are all consequential and are required by the broadening of the application from a member of the House of Commons to a member of the Senate.

This would make it possible for a future senator to elect, for example, for prior service as a member of the House of Commons.

The other changes are purely consequential. There are references to dates which were not there before having to do with the coming into force of various provisions in the existing law.

It would also have application—this is anticipating slightly—to any present senator who elected under Part III to come under the provisions of this act; but I think perhaps we could leave any discussion of that until we come to Part III.

The ACTING CHAIRMAN: Perhaps in view of the fact that there may be some senators who will elect or might want to know whether to elect to come under Part II, we should get the explanation of the manner in which a future appointment to the Senate will be treated with respect to his contributions and to his benefits, so that we will be able to know if an existing senator elects to come under Part II, what the treatment would be.

Mr. CLARK: A senator to whom Part II would apply then would contribute at the rate of \$720 a year. This would lead to the building up of a pension at the rate of \$300 a year and in turn to the building up of a widow's benefit at the rate of \$180 a year. It would mean that, once a senator to whom it applied had contributed in respect of sessions in three or more Parliaments and left, for whatever reason he might leave, the pension produced by those contributions, on the rates which I have indicated, would be payable either to him or to his widow as the case might be.

Senator CROLL: A senator who has a pension in the House of Commons now, and is at present a member, can continue to build on that fund?

Mr. CLARK: That is correct; and a present senator who had a suspended benefit from the House of Commons, if he elected to come under Part II, then would simply be augmenting the pension which he has already accumulated to some extent in respect of his former service.

Senator HUGESSEN: What is the maximum pension he could build up?

Mr. CLARK: It is \$9,000, under the act at the moment—in other words, 30 years of service would produce the maximum of \$9,000.

Senator ROEBUCK: You will be all right on that.

Senator HUGESSEN: A person who has left the House of Commons does not come into that figure. We cannot go back to the House of Commons.

The ACTING CHAIRMAN: I understand the senator's point is that service in the House of Commons is not eligible prior to the passing of the Members of Parliament Retiring Allowances Act.

Mr. CLARK: It is possible to elect in respect of prior service—

Senator KINLEY: And pay a fee.

Mr. CLARK: Pay the contribution, plus interest.

Senator FLYNN: May I suggest that this reply would not be absolutely correct. I do not think you may buy back years under this system. I understand that someone who has added service in the House of Commons and who has built up a pension—I think this is in the case of a few, but there are some who have not stayed very long—I think those cannot add to this, but they cannot buy back years, because there are sections here that clearly exclude them. I refer to sections 6 and 7.

Senator CONNOLLY (Ottawa West): Of what act?

Senator FLYNN: Of this act.

Senator CONNOLLY (Ottawa West): Of this bill.

Senator FLYNN: It may be that if a member who has built up a pension there would have to go under Part III, he would add to what he had, to the sum he had there and build a pension accordingly.

Mr. CLARK: Section 7(2) (a) of the present act, which does not appear in this amendment but is still in force, permits a member to whom it applies to elect—

Senator CONNOLLY (*Ottawa West*): Excuse me, I think the witness has not identified the legislation to which he is referring. In this case he is referring to the Members of Parliament Retiring Allowances Act.

Mr. CLARK: In section 7(2) (a) of the Members of Parliament Retiring Allowances Act a member is permitted to elect in respect of a previous session in respect of which he received a withdrawal allowance under the former act. In other words, this applies not only to those senators who have built up a suspended pension credit under the Members of Parliament Retiring Allowances Act but it permits another member who received instead a return of contributions, or a withdrawal allowance, as it is referred to. It permits him to elect and pick up that service if he so desires.

Senator CROLL: Mr. Clark, the question that I think was asked was this—Senator Kinley asked it and used it as an example—and he is a good example always—in a case where he had 20 years' service before this pension plan came into force, then he went over to the Senate—do you suggest that under this he could pick up those 20 years?

Mr. CLARK: If he elected, under clause 14, to come under the Members of Parliament Retiring Allowances Act, it would be possible for him to elect.

Senator FLYNN: Under what section?

The ACTING CHAIRMAN: Section 7 of the Members of Parliament Retiring Allowances Act.

Senator FLYNN: Not as amended.

Mr. CLARK: The effect of the election under clause 14—here again we have to refer to clause 14—it deems him to have become a member of the Senate after “this act comes into force”. In other words, he has not been a member of the Senate up until that time. Therefore the right under clause 7(1) of the Members of Parliament Retiring Allowances Act to elect for prior service would apply to him.

Now, this could only apply to service as a member of the House of Commons because, and during the years in which he has, up to now, been a member of the Senate, he is deemed for the purposes of this, not to have been such a member.

Senator FLYNN: Section 6—the new section 7 of the Members of Parliament Retiring Allowances Act refers to—that the member must, within one year from the 20th November, 1952, in the case of a member who was a member of the House of Commons on that day—well, of course, within one year from that date—but unless he has made an election I do not think he would be qualified. Now it will be too late.

If you take section 7A, a member may, within one year from the 2nd August, 1963—it is again too late, if you speak of present members of the Senate.

Mr. CLARK: All I can say on that point is that the effect of the election under clause 14(1)—as shown in clause 14(2), on page 5 of the bill—is that he is deemed to have been summoned to the Senate “immediately after the coming into force of this act”. So he is regarded as not having been a senator, so that the effect of section 7(2) (a) of the Members of Parliament Retiring Allowances Act is to give him—

The ACTING CHAIRMAN: Re-election to the House of Commons? Is that the effect?

Mr. CLARK: The effect of section 7(2) (a) is to give him—

Senator FLYNN: From the 2nd August, 1963?

Mr. CLARK: No, from the day on which Parliament first is in session after he becomes a member after the 2nd August. Clause 14(2) says that he is "summoned to the Senate immediately after the coming into force of this act", so the year would be calculated from that time.

The ACTING CHAIRMAN: He is deemed to become a member after the 2nd day of August, 1963.

Senator FLYNN: Deemed to have become a member after the 2nd day of August, 1963, but you will not say that the 2nd day of August, 1963 is only one year ago?

Mr. THORSON: If I may explain that, the right of election under section 7A is limited to one year from the day on which Parliament first is in session after he first becomes a member after the 2nd of August, 1963.

Senator FLYNN: I know.

Mr. THORSON: So that it would run one year from the time mentioned in clause 14(2) of this bill. It would be one year from that date.

Senator FLYNN: I cannot see how it can be. I cannot see how I can "first" become a member if I have already been a member. Clause 14(2) does say that he is deemed to have been summoned to the Senate immediately after "the coming into force of this act," but he is not deemed to have been first elected after the "coming into force of this act." You have first to be a member.

Senator HUGESSEN: It is the definition of member.

Senator CONNOLLY (*Ottawa West*): It derives from the definition of member.

Senator FLYNN: But how can you say that I have "first" become a member immediately after the coming into force of this act?

Senator CONNOLLY (*Ottawa West*): That is only for the purpose of the election.

Senator CROLL: Legal reincarnation.

Senator FLYNN: How can he buy back time? I would like this to be proved. Let us hope the context says so.

Senator CONNOLLY (*Ottawa West*): My friend's objection—so that it may be clearly on the record—is that, assuming the election is made under clause 14, to come under Part II of the act, then what right has a senator who makes such an election to buy back his service in the House of Commons? Is that correct?

Senator FLYNN: That is right—when he has not built up a fund under the Members of Parliament Retiring Allowances Act.

Mr. THORSON: Because he is regarded by clause 14 of the bill as having been summoned to the Senate "immediately after the coming into force of this act." That is the time at which he becomes a "member," as defined in the Members of Parliament Retiring Allowances Act. Therefore, the right to elect runs from that time and he would have one year from the coming into force of the bill to elect.

Senator LAMBERT: That means the legislation is retroactive in so far as service in the House of Commons is concerned.

Mr. THORSON: It permits him to make an election to contribute in respect of that service.

Senator LAMBERT: Where a senator has had service in the House of Commons, does he have a right to that or does he have to pick it up now?

Mr. CLARK: Those senators who on ceasing to be members of the House of Commons were entitled to an annual payment simply pick up those rights again. But if they received a withdrawal allowance on being summoned to the

Senate, it will be necessary to elect to contribute for that service assuming that an election first of all was made under section 14, subsection 1, to come under the Members of Parliament Retiring Allowances Act, and then an election was made under section 7 of that act.

Senator LAMBERT: The point I want to make clear is that the provisions in this bill are not in effect yet. But when a member serves for more than three sessions in the other house and is appointed to the Senate are his rights as a member of the House of Commons then abandoned?

Mr. CLARK: They are held in suspense.

Senator LAMBERT: What does that mean? Unless this legislation comes into effect, there is no right under the House of Commons act.

The ACTING CHAIRMAN: The Members of Parliament Retiring Allowances Act says in section 15 that a payment shall be discontinued while that person

(a) is a Senator or a member,

(b) is employed in the public service of Canada, or

(c) renders services the remuneration for which is paid out of the Consolidated Revenue Fund or by an agent of Her Majesty in right of Canada,

Senator LAMBERT: That is the case I wanted to establish. You can now pick it up, but you couldn't have done so without this legislation.

The ACTING CHAIRMAN: Senator White.

Senator WHITE: What is the position of present senators who have paid up pensions in the House of Commons and who do not elect under section 14? What is the position with regard to the paid-up pension in the House of Commons fund?

Mr. CLARK: Under section 15 of the Members of Parliament Retiring Allowances Act that pension is discontinued so long as he is a senator. Should he resign at some stage, then it would become payable on resignation.

Senator WHITE: Do you mean a senator would receive two pensions, the paid-up pension of the House of Commons and the pension under this bill?

Mr. CLARK: That would be the case.

Senator WHITE: Are you further inferring that the senator cannot receive a pension from the House of Commons, or rather that he cannot receive the money paid in for the pension—did you say that? Did you say that the money must stay there?

Mr. CLARK: Not while he is a senator. In the event of resignation it would be payable, and in the event of death there would be a withdrawal allowance equal to the payments he had made as a member of the House of Commons.

Senator WHITE: That would hardly make sense if a senator were going to get two pensions. Is it correct that he would receive two pensions, or is that just your opinion?

Mr. CLARK: That is the position.

The ACTING CHAIRMAN: Perhaps Mr. Thorson can answer this since it is a legal question.

Mr. THORSON: That is my understanding as to what would happen.

Senator WHITE: Before this bill comes into operation, your paid-up pension in the House of Commons has to remain there, and if you retire from the Senate you would draw a pension. Therefore you cannot get the money back, but if you die there will be a refund to your estate?

The ACTING CHAIRMAN: That is not changed in this bill. But in addition there is a provision for a pension on resignation from the Senate when this bill comes into effect.

Senator MACDONALD (*Brantford*): If a senator has a credit in the fund and elects to retire, does he get the money back? Or does he have to wait until he dies?

Mr. THORSON: If he retires he gets his pension at that time.

Senator MACDONALD (*Brantford*): Did you say that a former member of the House of Commons notwithstanding the fact that the Retiring Allowances Act did not come into effect until 1952, can pay back to the day he entered Parliament even if it were back in 1935?

Mr. CLARK: That power was in the law from 1952; that is correct.

Senator MACDONALD (*Brantford*): Did I also understand you to say that if a member of the Senate who entered Parliament in 1935—and there are a number here who entered Parliament long before that, and therefore have more than 30 years' service in Parliament—did I understand you to say that if they buy—

An Hon. SENATOR: We get a free pension.

Senator MACDONALD (*Brantford*): But if you don't want to take it, you could retire and elect to buy back into the retirement fund sufficient to bring up the \$9,000 to do so?

Mr. THORVALDSON: Only if they were 30 years as a member of the House of Commons.

Senator LAMBERT: Or three sessions.

Senator MACDONALD (*Brantford*): If the service has been 30 years in Parliament, in both houses, continuously.

Mr. CLARK: I must point out that the right to elect in respect of prior service relates only to service as a member of the House of Commons.

Senator MACDONALD (*Brantford*): If a member had been in the House of Commons for more than three sessions, and he built up a credit, can he pay back now to the date on which he had that credit?

Mr. CLARK: He cannot pick up the intervening time. That is not permitted under the bill.

Senator CONNOLLY (*Ottawa West*): That is the intervening time when he was not in the Senate.

Mr. CLARK: That is right.

Senator MACDONALD (*Brantford*): From now on can he start making payments and add that to his previous service in the House of Commons?

Senator CONNOLLY (*Ottawa West*): You can pick up back time for any service in the House of Commons.

Mr. CLARK: With one qualification. If a senator was a member of the House of Commons during the time when the Members of Parliament Retiring Allowances Act was in effect, and he did not take the opportunity which that gave him to pick up prior service, then he has given up the opportunity to pick up service, say, going back to 1935, but if he picked it up, or if he did not have the opportunity to do so, then he can pick it up again now.

Senator FLYNN: That is what I was trying to indicate. If you have built up a pension in the other place, of course you can have your years in the Senate from now on in accordance with what you did at that time. But if you did not build up a pension—for instance, somebody who stayed only one session in Parliament, he cannot now elect to go under Part II and buy back his years in the House of Commons, particularly if he withdrew the amount he had paid in at that time.

Mr. CLARK: If you received a withdrawal allowance, you can pick up that service. If a senator in 1953 had service going back to 1935, and he decided

not to pick that service up, he has lost his chance, but if he had picked it up and had it to his credit, then he can still have it to his credit here if he makes the necessary election.

Senator FLYNN: Even if his contributions were returned to him when he left the house?

Mr. CLARK: He has to repay the contributions with interest.

Senator FLYNN: It is a strange wording.

The ACTING CHAIRMAN: Any further discussion on section 3?

Senator FLYNN: If we are discussing generally the application of the bill I would have a few further questions. My first question is that Part II does not apply to members of the Senate who are presently 75 or over. They have not the option to elect to come under Part II. I think this is clear in section 14.

Mr. CLARK: That is correct.

The ACTING CHAIRMAN: The answer is yes.

Senator FLYNN: Therefore, what would be the practical result of a senator, say, 70 years of age who would elect to go under Part II? First of all he has agreed thereby to resign at 75 years of age, or to retire at 75. Therefore he would contribute only five years. If there were not three Parliaments during that time he would not be able to build up a pension under this Retiring Allowances Act.

Mr. CLARK: That would be so if he had no prior service as a member of the House of Commons.

Senator FLYNN: And if he contributed during 10 years and there were three Parliaments intervening, the maximum that he could build up would be \$3,000?

Mr. CLARK: Yes, in 10 years, that is correct—with related widow's benefits of \$1,800.

Senator FLYNN: You mentioned the maximum pension under the Retiring Allowances Act was \$9,000. In this act there is provision that—it is under Part III, but I want to discuss it in relation to Part II—the maximum period for contribution is 26½ years. I thought you said it took 30 years of service to get the maximum.

Mr. CLARK: This is the period related to a pension of \$8,000.

Senator FLYNN: That is 26½ years; and 30 years is for a pension of \$9,000?

Mr. CLARK: Yes, that is correct.

The ACTING CHAIRMAN: Shall we go ahead now and deal with Part II clause by clause?

Senator CROLL: Could we deal with Part III and then come back to Part II, please?

The ACTING CHAIRMAN: Part III: Provisions applicable to persons summoned to Senate before commencement of act. Perhaps under section 13 we might have Mr. Thorson or Mr. Clark give us the explanation of Part III.

Mr. THORSON: Yes. As the part heading denotes, this part is applicable to persons who were summoned to the Senate before the coming into force of the act.

Section 13 defines a "senator" as being one who was summoned to the Senate before the coming into force of the act, but excludes specifically any person who makes an election under the proposed section 14.

Section 14 is the provision that has already been discussed. This section authorizes a present senator who has not attained the age of 75 to make an election within one year of the time when the bill becomes law not to have Part III of the bill apply to him. In those circumstances, by virtue of subsection

2 of the same clause—that is at the top of page 5 of the English version of the bill which I have before me—such a person would be regarded, for the purpose of section 29 of the British North America Act—which is set out in the first clause of this bill—and for all purposes of the Members of Parliament Retiring Allowances Act to have been summoned to the Senate immediately after the coming into force of this act. In other words, he is put in exactly the same position as a newly appointed senator would be, to whom Part II of the bill will apply.

Senator REID: But he would not have reached the age of 75?

Mr. THORSON: Yes, that is right. This is an election available only to those who at the time of making the election have not yet reached 75 years of age.

Senator ASELTINE: In other words, he must elect not to come under it?

Mr. THORSON: Yes, it is a positive election not to come under it.

Senator ASELTINE: If he does not elect, he automatically comes under Part III?

Mr. THORSON: Yes.

Senator CHOQUETTE: Let us assume a senator 60 years of age when this bill was passed. What would be the more advantageous election to make, the plan to elect to come under?

The ACTING CHAIRMAN: How long are you going to live?

Mr. THORSON: There are so many imponderables I think it would be very adventuresome of me even to attempt an answer to that question. I think generally, though, it can be stated that the option to take advantage of the election will be of interest primarily to those who are younger rather than those who are older. In the age groups approaching 70 or above 70 years of age, but still under 75, normally there would be no real incentive to elect to come under the Members of Parliament Retiring Allowances Act, unless they had previously been members of the House of Commons, in which case it might well be to their advantage, in effect, to build further credits on the credits they had acquired before they became members of the Senate.

Senator CHOQUETTE: That deals with my point.

Senator CROLL: Mr. Thorson, starting with the maximum of \$3,000, assuming they had 10 years more at age 65, or say 15 years, how could they conceivably build up to that maximum?

Mr. THORSON: At the age of 65, are you assuming any prior service in the House of Commons?

Senator CROLL: I am assuming prior service in the Commons, the maximum of \$3,000. The maximum at the time was \$3,000.

Mr. CLARK: Perhaps I could speak on that. It is now possible, Senator Croll, to build up in respect of prior service the previous maximum of \$3,000 to whatever higher figure would be applicable in the individual case.

The ACTING CHAIRMAN: The old \$3,000 maximum has gone.

Mr. THORSON: That was removed two years ago.

Mr. CLARK: In 1963.

Senator MACDONALD (Brantford): Wouldn't you have had to have had continuous service in the House of Commons up to now to build up the \$9,000 maximum? If a person retired, we will say, in 1953 and had a pension then of the maximum, which was then \$3,000, he could not build up between 1953 and the present time. Supposing he were now 65, would it be possible for him to build up to a pension of \$8,000?

Mr. CLARK: In the particular case which you have cited, related to a senator who ceased to be a member of the House of Commons in 1953, it would depend whether he had contributed on all his prior service as a member of the

House of Commons. If he had contributed on all of it, it would not be possible to increase the \$3,000; but if he had not it would now be possible to elect in respect of additional service and augment the \$3,000; and many members of the House of Commons did that after the amendments in 1963.

Senator MACDONALD (*Brantford*): Yes, but if a man were 65 now in the Senate, he would only have 10 years in which to do that. He would be required to retire at 75. Could he build up from the \$3,000 in the next 10 years, to bring it up to \$8,000?

Mr. CLARK: No, if \$3,000 was the absolute maximum that he could obtain as a member of the House of Commons, the most that he could do in 10 years under the present bill would be to build on another \$3,000, with the related widow's benefits.

Senator CROLL: So that he is much better off to stay under this pension plan at 75 and walk out with a pension of \$8,000.

Senator MACDONALD (*Brantford*): Except for the widow's rights.

Mr. THORSON: Not necessarily. It might be possible to envisage circumstances where it would be to the senator's advantage to elect in favour of a smaller pension to himself, but with potentially better benefits available to his widow.

Senator MACDONALD (*Brantford*): That is right.

Mr. THORSON: This is something that can only be assessed on an individual basis. But the benefits to widows available under the Members of Parliament Retiring Allowances Act are different from those proposed in Part III of this bill. There is an additional protection available to the person who elects under the Members of Parliament Act.

The CHAIRMAN: Then I think that brings us to section 15, the section dealing with the situation where there is no election to come under the Retiring Allowances Act. Is that right? We have gone as far as section 14, I think. Section 15, Mr. Thorson. Would you explain that?

Mr. THORSON: Yes, sir. This provision was in the bill as it was first introduced, subject to the modification relating to the time period. It authorizes the Governor in Council to grant an annuity to any senator who has attained 75 years of age, if he resigns within one year from the time that he attains that age, or if he has already attained that age when the new law comes into force, within one year of its coming into force.

Senator REID: But at what age if he is now 75 or over?

Mr. THORSON: If he is 78 when the new law comes into force then this option is to be exercised by him within one year from the time the bill itself comes into force.

Senator METHOT: And if he is 70 he can wait until he is 75?

Mr. THORSON: Yes, he can wait until the time from his 75th birthday to his 76th birthday.

Senator ROEBUCK: But why this limitation of one year? Why should not that option continue? Why should he not be able to do that at any time while he is a member of the Senate? This bill is not yet passed.

Senator CONNOLLY (*Ottawa West*): I think that is a matter of policy. It was felt that the retiring age fixed by the bill should be 75, and then it was felt there should be an option allowed for one year following the attainment of the age of 75.

Senator CHOQUETTE: But why? Why should not a man continue on to the age of 78, and then give one or two months' notice? Is there an explanation for this?

Senator CONNOLLY (*Ottawa West*): Yes, the explanation is that it is a policy decision that the retiring age should be 75.

Senator ROEBUCK: That does not apply to senators who were appointed for life. The retiring age of 75 is clearly not applicable to those senators who are here now and who were appointed for life. The bill gives only a year in which a senator may make his election. If a senator allows that year to go by then, as I understand it, he cannot retire with pension except on the ground of infirmity. That is to say, those who still feel they have a contribution to make are discriminated against in that way. Why is that so?

The ACTING CHAIRMAN: It is a matter of policy.

Senator ROEBUCK: That is no answer. It may be a wrong policy.

The ACTING CHAIRMAN: What I mean is that we cannot direct that question to our witnesses.

Senator ROEBUCK: That is true enough.

The ACTING CHAIRMAN: We have to answer that ourselves.

Senator ROEBUCK: I got the answer from the Leader of the Government, and I say that his answer is not an answer. It may be an answer to an objection to an act, but it is not an answer to a bill that is not yet passed.

Senator THORVALDSON: Mr. Chairman, this question was asked very pointedly in the house the other day. It was asked by me, and I received the answer that we have just been given. The answer by the honourable Leader of the Government was that it was felt this should be done. But, that is not an answer. The honourable Leader of the Government has just said: "Well, it is Government policy". The question that should be asked, and that should be on the record here, is: "Why is it Government policy? What is the reason for this policy? Why must the election be made within one year and not within a year and a half or two years, or ten years, or why should there be an election at all?" That is the point that bothers me and our colleague, Senator Roebuck, as I think it does many others.

We should be told the reason why this election is required to be made within one year. I do not think it is enough to say that it is Government policy without any further reason being given. This requirement of an election within one year was not contained in the bill when it was first introduced in the other place. If I am not right in that then perhaps I may be corrected. Consequently, whose policy is it? Did the Government change its policy in this regard after the bill went before the House of Commons, and if it changed its policy in this regard why did it change it? Was it as a result of pressures by minority groups, or was it because the Government felt it had made a mistake in the original bill?

I see no reason why any one should feel this is a proper provision to be in this bill. I see no reason why such a decision should be Government policy because I cannot, for the life of me, see any sense in it at all. I want to suggest, as I did in the house the other day, that the Senate and this committee should carefully consider this provision. If it is not right and if we believe that it is incorrect and should not be there—if we believe, for instance it was imposed on the Government by minority groups—then we should not accept it. It is far beneath the dignity of the Senate to accept legislation that is prompted in that manner, if such is the case.

Senator ROEBUCK: I am not so much concerned about our dignity as I am concerned about what looks to me to be an injustice. We must speak about ourselves to a certain extent in this discussion because we are thinking personally. I have no intention of retiring. I am long past 75. I could retire within one year, but if at the end of that year I feel as I do now, namely, that I still have a contribution to make, then why should I be discriminated

against in this way in that I shall be unable to retire at any later time except by reason of infirmity. That seems to me to be all wrong.

Senator POWER: Is there a question of death-bed marriages here? The great trouble I have had for many years getting pensions for soldiers was in avoiding pensions being granted to young widows who had married men of about 90. Do you know that in the United States of America in 1935 there were people drawing pensions out of the 1812 war?

Senator ROEBUCK: What application has that here?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, the idea of a retirement age for senators is certainly not new to this Government. The age of 75 is one that seemed to be appropriate in the circumstances, because it is the age, for example, at which judges of the Superior Courts retire. It is true that the provision with reference to the exercise of the option within a year was not in the original draft of the bill. The suggestion for this, I am bound to say, came from people in this chamber. It did not come from people belonging to any minority group that I am aware of, because I did not hear of it from them. In any event, there are reasons—Senator Power has mentioned one—why a number of people here felt that this was a wise provision to make.

Senator ROEBUCK: I was not among them. I did not make any such suggestion, and I do not know who did.

Senator CONNOLLY (*Ottawa West*): What I do emphasize, as I emphasized in the house when Senator Thorvaldson spoke on this matter, is that the existing patent is not disturbed. If a senator, as Senator Roebuck suggests, desires to see his patent honoured then this option is available to him and to all other senators present. This was not available in the legislation that was proposed not once but twice by the former government. That government was going to retire all senators on their attaining the age of 75 regardless of the patent. I do not think it is demeaning in any way for senators to be asked to exercise this option.

The point was raised in the house on one occasion, and other honourable senators came and spoke to me about it, and it was generally felt that it was a sensible provision. I think that clause 15 (b) is something that must be born constantly in mind in connection with the exercise of the option as well.

Senator HUGESSEN: Mr. Chairman, I must say that I take a completely different view from that taken by Senator Roebuck on this question. What we are getting here is an option that we do not have at the present time. At the present time we have nothing. We have to go on to the end of our lives, at which time our membership in the Senate comes to an end. Here we are being given an option that we did not have before to retire at 75, if we want to, on a reasonable pension, with a smaller pension for our widows. That is something we do not have now, and it is an advantage we are being given. To object to it because it has a limitation does not seem to me to be sensible at all.

Senator CHOQUETTE: What would happen if we propose an amendment and are broadminded enough to vote for it—

Senator CONNOLLY (*Ottawa West*): Oh, do not impute motives to senators.

Senator CHOQUETTE: How would that affect the bill? I have still not received a good reason or explanation as to why election must be made within one year of reaching 75; and I am saying that if we deleted that part, letting a senator go on until 77 or 78 and elect at any time if he wants to do so, how would it affect the bill?

Senator HUGESSEN: Would you prefer to have an option of retiring within a year, or no election at all—no option at all?

Senator CHOQUETTE: I would want to retire at 79 or 80, or 85 or 86.

Senator HUGESSEN: You cannot do it now.

Senator CONNOLLY (*Ottawa West*): But this is an option you are getting.

The ACTING CHAIRMAN: Senator Choquette would like a better option.

Senator FLYNN: Mr. Chairman, I think we are not following the procedure we had agreed upon. We were going to question the witnesses on matters of fact and then come back to each section and discuss the merits, and maybe move for amendment. I think we should finish with the witnesses.

The ACTING CHAIRMAN: We are really on section 15, and we got beyond the explanation into a question of policy. However, perhaps we have had enough discussion—

Senator ROEBUCK: No. I was trying to ask a question in connection with section 15, and if I am permitted, I would like to put it now. Do I understand that if one elects within a year, and then dies, his widow gets a pension? If he does not elect, but later on retires because of infirmity, does his widow still get a pension?

The ACTING CHAIRMAN: The answer is yes.

Senator ROEBUCK: And if between the time of the year and the retirement because of infirmity he is killed in an automobile accident, he does not get it?

Senator ASELTINE: That is the question I asked in the house when Senator Connolly was explaining the bill on May 20 last. The question I asked was as follows:

I have also been troubled about subsection (b) of section 15, and so I want to ask this question: If a senator who is now 75 years of age does not resign within one year, and some time after the expiration of the year, while he is still a senator, he becomes incapacitated and is unable to carry out his duties in the Senate, is it correct that he would then have the right to resign and obtain the pension rights?

Senator Connolly said that was the law. However, I was not clear at the time whether that included a pension for my wife after I passed away.

The ACTING CHAIRMAN: The answer is yes.

Senator FLYNN: The answer is to pray that you become infirm or incapacitated rather than die.

Senator REID: Mr. Chairman, may I ask a question about subsection (b) of section 15, which says, "who has become afflicted with some permanent infirmity". Is that to be carried out as it is written? Supposing he was afflicted with something else and was unable to come in. Would he be debarred then and lose his money? The subsection says specifically "who has become afflicted with some permanent infirmity."

The ACTING CHAIRMAN: Is your question related to a temporary disability which would prevent him from attending in the Senate?

Senator BAIRD: He has to have a permanent disability.

The ACTING CHAIRMAN: And resign on that account.

Senator BAIRD: May I ask a question, Mr. Chairman? Supposing I am at the tender year of 74, and I may elect to continue on, and later at age 81 or 82, I may think of marrying again. Where would my widow fit into a case of that kind, would she get anything?

Mr. THORSON: If for example, you were married at 81 while you were still a senator, then we will say two or three years later you become permanently disabled and resign, your widow would be entitled to the annuity provided for in clause 16.

The ACTING CHAIRMAN: That will be attractive to some people, Senator Baird.

Senator THORVALDSON: Mr. Chairman, I am not quite clear on the meaning of section 14, and I refrained from asking this question until we had dealt with section 15, because I want to be clear on the relationship between the two. Now, in the case of a senator of say 40 or 45 years of age, as I understand it from section 14, it says he must elect within one year from the coming into force of the act not to have the part applied to him if he does not want it applied. Supposing such a person elects not to have Part III applied to him, I take it that means that that senator at no time will have an option to elect under section 15; is that correct?

Mr. THORSON: That is correct senator.

Senator THORVALDSON: Consequently, at no time in the future will he be eligible to elect. If he would like to retire after 75 he cannot do so. Furthermore, if he should become infirm he cannot take advantage of section 15(b)?

Mr. THORSON: That is correct. What it means is that if he at the age of 45 makes such an election under section 14, he is regarded for all practical purposes as a newly-appointed senator and the compulsory retirement provision of section 29 of the British North America Act would apply to him. Similarly, he would be treated for all purposes as coming under the Members of Parliament Retiring Allowances Act, and in the event of disability the provisions applying to all new senators would apply to him.

Senator THORVALDSON: May I then ask this? You say that he completely comes then under Part II?

Mr. THORSON: Yes.

Senator THORVALDSON: What is the relationship then between Part II and the part of section 15 which says that in any event apparently he is entitled to an annuity equal to two-thirds of his sessional indemnity?

The ACTING CHAIRMAN: Not if he has elected under section 14 to come under Part II. It is only the senator who does not elect under section 14 that comes under section 15. Is that not right?

Mr. THORSON: That is correct, Mr. Chairman. If you look at the definition in section 13, Senator Thorvaldson, you will see that none of the sections of Part III apply to a senator who elects under section 14. So he does not come under the provisions of section 15.

The ACTING CHAIRMAN: It might be put this way, that a senator, say 50 years of age, who does not elect to come under Part II, takes his chance on whether he will live to 75 and take a pension under Part III; but even in that case if he is afflicted before 75, section 15(b), I understand, applies to him.

Senator THORVALDSON: I think I got the contrary answer to that a moment ago.

Mr. THORSON: Section 15(b) would only apply to a senator who did not elect under section 14. In other words, if he had made an election under section 14 he would be treated for all purposes as a newly-appointed senator, and should he become disabled he would have to look to the Members of Parliament Retiring Allowances Act to determine the benefits that would be available to him at that time.

The ACTING CHAIRMAN: Senator Gershaw?

Senator GERSHAW: Mr. Chairman, I still see trouble in subsection (b) of section 15. The average doctor hesitates to certify permanence of infirmity. For example, nowadays, heart disease, tuberculosis, and nerve or kidney diseases might disable a person for a while, and it would be difficult for a doctor to certify permanence of disability. I think that if an expression such as "seemingly" permanent or "probably" permanent, were used, it would be better.

Senator POWER: Is incapacity to understand this bill a permanent disability? If so, I am permanently disabled.

The ACTING CHAIRMAN: Does the witness wish to make any comment?

Mr. THORSON: I would normally have agreed with that comment concerning the "permanence" . . .

The ACTING CHAIRMAN: Senator Haig?

Senator HAIG: My understanding is that if you make the election you have Part II apply and you come under the House of Commons retirement. If you do not elect you come under Part III, and section 15 applies to you?

Mr. THORSON: Yes.

Senator HAIG: Therefore, you have to resign by your 76th birthday?

Mr. THORSON: No, sir.

Senator BAIRD: You get it automatically.

Mr. THORSON: Yes, the resignation is tied to the right to an annuity. There is no obligation to resign; there is simply no right to an annuity unless there is a resignation within the year.

Senator MACDONALD (*Brantford*): Do I understand correctly that if you have not elected at the present time to retire at 75, you could elect to do that, then you would have the benefit of the law in retirement and your widow will get the benefit of that?

Mr. THORSON: Yes, sir, that is correct.

Senator MACDONALD (*Brantford*): An amount of \$8,000 a year?

The ACTING CHAIRMAN: No.

Senator MACDONALD (*Brantford*): Then if you do not elect now, and if you are not 75, if you did not elect, then you have another choice when you become 75, to elect?

The ACTING CHAIRMAN: That is correct.

Mr. CLARK: That is right.

Senator MACDONALD (*Brantford*): Then the only reason for you to elect before age 75 would be to protect your widow?

The ACTING CHAIRMAN: No, it is not necessarily so, it is a question of the comparison of the benefits under the Members of Parliament Retiring Allowances Act and the benefits under Part III.

Senator MACDONALD (*Brantford*): There would be other advantages if you died before age 75? You would not get any benefit?

The ACTING CHAIRMAN: Mr. Thorson gave the answer to Senator Croll earlier, when he said that in the older years the advantage seemed to lie in staying under Part III. He did not say this, but I imagine it would follow—in the younger years it might be to advantage to go under Part II.

Senator IRVINE: Mr. Chairman, in respect to clause 15 (b), in respect to a present senator becoming incapacitated through illness, and who has not reached the retirement age of 75 years, would the pension of two-thirds of his or her annual indemnity apply?

Mr. THORSON: Yes.

Mr. CLARK: The senator is quite right, the answer to the senator is yes.

Senator IRVINE: And that includes women as well as men?

Mr. THORSON: Indeed it does.

Senator SMITH (*Queens-Shelburne*): I would like to come back to clause 15(b) in relation to what Senator Gershaw has said. I wonder if Mr. Thorson would explain to us the meaning of the language of 15 (b) and the usual interpretation of "total and permanent disability" which is found in insurance policies and so on.

Mr. THORSON: This terminology is not new to this bill, as I am sure you are aware. There are a number of pension statutes of the Parliament of Canada that contain similar language, referring to a "permanent infirmity" which is of a disabling nature. The practice, as I understand it, is that medical evidence in the form of a certificate, is required indicating that, in the opinion of the medical examiner, the infirmity is of such a nature as to make it in all probability a permanent infirmity disabling the person in question from the performance of his duties.

The Acting CHAIRMAN: Due performance.

Mr. THORSON: Due performance of his duties. In those circumstances the certificate would be accepted as evidence of the state of affairs described in clause 15 (b) and the pension would be granted on the basis of that certificate.

Senator SMITH (*Queens-Shelburne*): Perhaps Mr. Thorson could clear up this point. Is there really any difference in the meaning of this language, than the meaning of the usual language which is contained in life insurance policies, which refer to "total and permanent disability"? I do not think it says "disabling him from the due performance" of his particular occupation. In my own personal experience, the interpretation in life insurance policies in this instance bears a very close relationship to this, or might be a little stricter in its application than this could be.

I am thinking of this point, so that you will understand why I am asking the question. The person I can envisage being capable of performing some duties of running a business by a telephone call once a day, to see what sales there were, he is not completely and totally disabled, from all points of view, such as would be the man with a stroke, lying in bed. The language of this strikes me is that that would be so, that a man would have to be totally and permanently disabled from coming to the Senate and participating in the Banking and Commerce Committee from day to day. Is that the interpretation?

Mr. THORSON: Not quite, senator. You have put your finger, I think, on the distinction between the type of insurance-clause disability, where the disability must be total and permanent; and the kind of disability as referred to here.

You will note that, in paragraph (b) of clause 15, the disability in question need only be "permanent" and of such a nature as to disable the person "from the due performance of his duties in the Senate". In other words, it is conceivable that a person could be "permanently" disabled, with a condition that rendered him unable to carry on his Senate duties, but not "totally" disabled.

Senator CHOQUETTE: He could still play golf.

Mr. THORSON: The example was given of a person carrying on a business from his home, using primarily the telephone. In those circumstances, he might well be permanently disabled and indeed he might be incapable of performing his duties as a member of the Senate, but not totally disabled, which I think is a rather more severe test than simply permanently disabled.

Senator SMITH (*Queens-Shelburne*): I am wondering whether that is a more severe test than "permanently disabled", because I think that is the point at issue. I am going to refer to my own personal experience, to clarify this point. I want to say to Mr. Thorson that on two separate periods in my life I was considered by a life insurance company to be totally and permanently disabled and on that basis I was paid a pension for several years in each of those periods. Surely the interpretation that one would place on these words—

Senator ASELTINE: You were not 75 at that time.

Senator SMITH (*Queens-Shelburne*): —would not be more burdensome on a person who might be considering resigning because of disability?

Mr. THORSON: I would agree that it would not be more burdensome.

Senator SMITH (*Queens-Shelburne*): It might be that the insurance company I was dealing with was a more generous one, being a Maritime insurance company.

Senator LANG: I wonder if the witness could give some idea as to the nature of the comparable pension under the Members of Parliament Retiring Allowances Act and these benefits set out under clause 15(b)?

Mr. CLARK: This is a question of comparison of the two benefits?

Senator LANG: At the maximum level. One is fixed, the other is variable.

Mr. CLARK: This is not just related to disability, this is an ordinary retirement?

Senator LANG: Disability under clause 15(b).

Mr. CLARK: The benefit under clause 15 (b) is one of \$8,000 a year, plus the availability of the benefit to the widow. In the case of the present Members of Parliament Retiring Allowances Act the benefit available to a former member, who resigns or ceases to be a member, would be related to the contributions which he has paid. On the present level of indemnity, it would take 26½ years to build up the level of \$8,000 availability under Part III.

On the other hand, by contributing for 30 years, he could build up to a maximum of \$9,000.

The widow's benefit is, as Mr. Thorson indicated a few moments ago, on a more favourable relationship to the member's own benefit under Part II, in that it is 60 per cent of the benefit that the member himself could receive—in other words, in relation to a maximum benefit to a member of \$9,000—the benefit to the widow would be \$5,400; or, in turn, if it was related to 20 years of full contributory service or \$6,000, then the widow's benefit would be \$3,600. So there is quite a benefit.

Senator LANG: Off-setting the other.

Senator BURCHILL: On the point which Senator Gershaw made, in the interpretation of the word "permanent," with all due deference to Senator Smith, let me say this. In the event of a person reaching the age of 75, and electing to remain on, would there be an added difficulty at, say, the age of 80 in determining whether he was permanently disabled or not, as distinct from infirmities due to old age. It seems to me it would be rather difficult.

The ACTING CHAIRMAN: I wonder if the answer might not be that the election or option under 15(b) starts with the senator himself, and presumably he would say "I wish to resign because I am permanently disabled." Then it is up to him to produce the evidence that this is the case.

Senator BURCHILL: But would it not be difficult for a doctor to determine this?

Senator FLYNN: The Governor has full discretion in deciding whether the evidence is sufficient or not.

The ACTING CHAIRMAN: Senator Gouin.

Senator GOUIN: Still referring to section 15(b), do I interpret it clearly to say that it applies to all senators now appointed irrespective of their age? They may be 75, but they are not obliged to come under the act. They can carry on as long as they are able and as long as they do not become disabled.

Mr. CLARK: That is right.

The Acting CHAIRMAN: Senator White.

Senator WHITE: Take the case of a senator who is 65 years of age and to whom Part III will apply. He pays into the fund for, say, nine years, which amounts to about \$7,000. Then, before he is 75 years of age he dies. I un-

derstand first of all that his widow gets no pension and that there is no refund to his estate; is that correct?

Mr. CLARK: That is correct.

Senator WHITE: Then I would like to ask Senator Connolly if that is Government policy. And I would like to ask where there is any justice in such a provision or what kind of a pension fund is it that you pay money into and get nothing out of.

Senator CONNOLLY (*Ottawa West*): This revolves around the question as to whether or not it was desirable, when this legislation was going to Parliament, that senators should make a contribution, and put themselves on the same basis as members of the House of Commons. I am first to admit, as I said in the Senate, but there are certain points in the bill that are far from perfect, but it was generally felt that senators contributing even in these circumstances would be performing the kind of act that most senators would wish to perform.

Senator WHITE: I would like to ask another question in view of that. Take the case of a member of Parliament or a senator who has a stake in the House of Commons fund. If that senator dies and he has no widow, is it correct that his estate would receive payment of the principal without interest?

Mr. THORSON: That is the case. There is, however, an additional difference here that should be appreciated. Let us suppose that a senator who remained under Part III of the bill, after this law came into effect, were to become disabled within two or three years' time. He would have under this legislation available to him an immediate annuity in the amount of \$8,000 a year. That is not available to members of the House of Commons. Under the Members of Parliament Retiring Allowances Act the benefit available to him in the event of his disability would be a benefit based on the amount of his contributions calculated in the manner described by Mr. Clark. Here, however, there would be an immediate annuity of \$8,000. So that in effect the person who has contributed over the years, albeit that he may have died before any pension became available to him, will have had in those years a very valuable insurance protection against disability. I am not sure as to the precise value of this, but perhaps Mr. Clark has some figures covering this aspect.

Mr. CLARK: We have looked into this question, which, as Mr. Thorson indicated, constitutes a substantial difference from the benefits available under the present act and the Members of Parliament Retiring Allowances Act. While disability benefits are commercially available up to the age of 55, they are normally available only for a limited period, and beyond the age of 65 the risk of disability is such that our information is that it is practically uninsurable. We have gathered some premium quotations which the Department of Insurance has supplied to us, and they indicate to us what would have to be paid to secure the benefits at the same level as is provided here. If we take the age of 55, which is perhaps a decisive age, we find that it would be necessary to pay \$122 a year to provide \$100 a month disability income. The \$8,000 benefit which would be available under Part III represents about \$660 a month. In other words multiplying \$122, the commercial premium required, by a little more than six, gives you a figure higher than the \$720 which is required to be paid under Part III.

Senator COOK: That is for a man of 55?

Mr. CLARK: That is for a man aged 55. Our advice is that it would be higher for a man of a higher age. But this \$100 a month is only payable to the age of 65, whereas in the case of senators to whom this applies on the basis of the premiums quoted, the \$8,000 a year for life would be a much more valuable benefit.

Senator COOK: And this would be to his widow too?

Mr. CLARK: And to his widow too. Furthermore, in the case of the commercial premiums I have mentioned, in the event of his death beforehand or in the event of his not becoming disabled at all there would be no return of the contributions, which was the subject of the question. This would be a straight insurance premium just as is automobile or fire insurance.

Senator CROLL: What you are saying in effect is, as I understand it, that there is no such thing as disability insurance beyond the age of 65—that nobody will carry it?

Mr. CLARK: That is our information.

Senator CROLL: That is the information I have too. Up to that age there is a prohibitive figure, without benefit to the widow.

The ACTING CHAIRMAN: Senator Boucher.

Senator BOUCHER: A senator who has reached the age of 75 and wishes to carry on does not have to give notice of that. At least that is my understanding; is that correct?

Mr. CLARK: That is correct.

The ACTING CHAIRMAN: Senator Reid.

Senator REID: Under the act it says there is one year in which to make a decision. When do you start collecting?

The ACTING CHAIRMAN: The question is when does the deduction of the \$720 commence?

Senator REID: When are you starting to collect?

Mr. CLARK: On the coming into effect of the act.

The ACTING CHAIRMAN: You start collecting when the act comes into effect.

Senator DESSUREAULT: Mr. Chairman, I would like to know why under section 15 the word "may" is used instead of the word "shall".

Mr. CLARK: I would say that this provision is similar to that contained in a number of other statutes. One I can recall particularly is the Judges Act. A number of acts affecting the members of the armed forces and the Royal Canadian Mounted Police are also on that basis. It is quite a normal provision.

Mr. THORSON: I suggest the discretion is more apparent than real.

Senator DESSUREAULT: Ten years from now it might be that "may" will be interpreted differently.

The ACTING CHAIRMAN: Perhaps Mr. Thorson can put the answer that he just said, that the discretion is more apparent than real. In other words, the circumstances under which it does not mean "shall" are very unlikely.

Mr. THORSON: Indeed, I think it is quite unthinkable that the Governor in Council would not grant an annuity where the precise legal requirements of the provisions in question had been met.

Senator MÉTHOT: Is the amount of \$720 deductible for income tax purposes?

Senator CONNOLLY (*Ottawa West*): I think perhaps I might intervene here for the benefit of all honourable senators. I would like to file a letter which I have received from the Minister of National Revenue dated May 21. Perhaps I might read it into the record because this is a ruling and it is a valuable one:

Part III of Bill C-98 provides for pensions to senators summoned before the coming into force of the bill and section 17 requires a six per cent contribution to the Consolidated Revenue Fund. I am prepared to register the arrangement established in Part III as a pension plan for the purposes of the Income Tax Act.

The Members of Parliament Retiring Allowances Act has already been registered as a pension plan and hence there should be no problem regarding contributions which may be made under that act.

I am writing to you in this connection in order that you may be in a position to answer my question which may be raised on this subject in the course of consideration of the bill in the Senate.

When the bill has been passed it is suggested that the Speaker or Clerk write to me or to Mr. McEntyre...

—incidentally, he is the deputy minister—

...requesting registration for the purposes of the Income Tax Act.

—signed E. J. Benson.

The ACTING CHAIRMAN: Does that answer your question, Senator Méthot?

Senator MÉTHOT: Yes.

Senator CONNOLLY (*Ottawa West*): Perhaps I might file a copy of this for the record.

Hon. SENATORS: Agreed.

Senator BEAUBIEN (*Bedford*): In the Pensions Act is there a limitation of \$1,500 being paid in? If a senator has already paid in \$1,500 can he add \$720 more?

Senator CONNOLLY (*Ottawa West*): I think I know Senator Beaubien's point, and I think the position is that for the year in which payments are made into a pension plan they are deductible. The payment of the pension, of course, when it is paid is taxable; the amount of the pension, when it is paid is taxable.

There are provisions of the Income Tax Act called the retirement savings plan sections, and those sections are superseded—Well, let me put it this way: permission is granted under that act to invest a certain amount of money in a personal retirement savings plan; that is to say, a retirement savings plan for the benefit of an individual. The amount that is allowed to be invested annually, non-taxable in the year in which it is made, is restricted. I forget the amount.

Senator CROLL: \$2,500.

Senator CONNOLLY (*Ottawa West*): That might be the maximum, and that \$2,500 maximum is reduced by amounts that are contributed to registered savings plans. I think that answers Senator Beaubien's question.

Senator ROEBUCK: I can add something to that. I paid, I think it was \$1,500 into the pension plan of my secretary, and this morning I received a letter from the Department of National Revenue saying it was deductible.

The ACTING CHAIRMAN: Senator Flynn?

Senator FLYNN: Mr. Chairman, in connection with the point raised by Senator Dessureault a few minutes ago, I want to ask Mr. Clark whether the use of the word "may" was not due to the fact that when the bill was first drafted there was no contribution from senators, and it was only a matter of discretion in the usual way, as it is for the judges who do not contribute, I understand, for their pensions.

Mr. THORSON: Yes, that is correct. It started off, when there was no provision for a contribution, in terms of the usual permissive authority given the Governor in Council to grant annuities such as those that are provided for here. However, it was not thought necessary to convert it into a statutory right, on the reasoning that so many pension plans are in any case on the same basis. For example, I think for 50 years the pensions available to all civil servants were written in terms of this sort of provision; and even today many pensions are nominally at least permissive. But in fact it is unthinkable, I believe, that when a person met the requirements there would be no pension granted.

Senator FLYNN: I agree. I just wanted to make the difference between the Members of Parliament Retiring Allowances Act—which uses the word "shall", or a positive rather than discretionary word—and this clear.

I would like to come back to the option which is available to go under Part II or Part III a little further than has been the case with regard to comparable benefits. I think you mentioned that the option to go under Part II is not practical for senators who are 65 or over. It can be of more benefit to younger senators.

Mr. THORSON: Unless they have prior service as members of the House of Commons.

Senator FLYNN: At least, they have to build ten years, and even at that you get only \$3,000.

Mr. THORSON: Yes, if the only contribution were for ten years.

Senator FLYNN: Might I suggest that Part III would not be considered as an ordinary pension scheme because, as was indicated, you can get \$8,000 without paying anything if you retire right away; or if I was completely disabled in an accident two days after the coming into force of this act I could get a \$8,000 pension. Whereas if I paid during 26 years and died six months or one month before making the option I would pay in \$19,000 and draw nothing at all for this, nor for my estate, nor for my wife. May I suggest that the figures given by the other witness, Mr. Clark, about the premium you would pay for disability pension makes the choice even more difficult.

The ACTING CHAIRMAN: Any other questions?

Senator WHITE: Could I ask the witness, in payments to widows you speak of an annuity. The question is: the annuity payable under this act and the widow's benefit under the House of Commons act for succession duty purposes would be an annuity or pension, or whatever you call it, capitalized?

Mr. THORSON: Yes, it would be treated in exactly the same way as any benefit of this nature arising on death.

Senator ROEBUCK: I have one comment, Mr. Chairman. I do not like this word "may". I know that governments such as we have had for the last 25 years have considered "may" as the equivalent of "shall", but no one can forecast the character of government we may have in the future. Aside from that, while we may not be taking any particular risk in respect to it, I do not like the appearance of it. A person may say to himself: "If I am satisfactory to the Government of the day I will get this; if I am not satisfactory, I will not get it". That may be a very incorrect judgment on the part of an individual, but it is certainly open to him to feel that way.

The comparisons we have been given between the Civil Service and ourselves, for instance, are not applicable because we occupy a position of independent thought in connection with Government measures. We may oppose Government measures, and we have done so frequently in the past. Some senators may feel that they are compromising their future by taking an independent position. For that reason I do not like this word "may".

Senator REID: May I ask this question: If a person did not decide to resign within the year and stayed on in the Senate for two or three years, would he get anything if he resigned three years later?

Mr. THORSON: Under section 15 (b) he would, yes, if he became disabled.

Senator REID: But suppose he was not disabled?

The ACTING CHAIRMAN: If he is not disabled and simply resigns he is in the same position as he is now. Senator Lang?

Senator LANG: Mr. Chairman, I go back to our leader's explanation in respect to the inter-relationship of this act with the Income Tax Act with respect to registered pension plans. I did not quite follow him. I am wondering—and this may answer Senator Beaubien's question—would a person who is

now contributing to a registered pension plan in the maximum amount of \$1,500, and who is not involved in any savings plan, be limited as to the deductibility of the contribution he makes under this bill?

The ACTING CHAIRMAN: Can the witnesses answer that question, or can Senator Connolly?

Mr. THORSON: I take it, sir, you are envisaging a situation where the individual has a personal retirement savings plan arrangement. Under that arrangement he is now contributing the maximum amount permitted for income tax purposes. It is my impression that in those circumstances the overall limit would apply, and he would have to make an adjustment to the amount of his contributions under the retirement savings plan—either that, or go on as before and not claim deduction of the contributions made here.

Senator LANG: Further to that, if that be the case and he pays the tax on the contributions over and above the maximum limit, when the amount is paid out to him on his retirement is it then taxable again in his hands?

Senator CONNOLLY (*Ottawa West*): That is a problem for the tax authorities. I do not think I can go that far. I think it is a very rare case that you are discussing, but let me come back again to Senator Beaubien's question. I think the provisions of the retirement savings plan sections of the Income Tax Act are optional. You can invest in a year up to a given maximum. You do not have to invest to that maximum. I speak from some personal experience because for some years I have put some money aside in this way. You need not go to the maximum. In my case my maximum will be reduced by \$720 because I am paying into this plan. In other words, you do not pay as much into the retirement savings plan. If you were paying the maximum under the retirement savings plan you will not be able to pay as much and also get the tax benefit.

Senator THORVALDSON: That is correct.

The ACTING CHAIRMAN: Have you the answer, Senator Lang?

Senator LANG: Partially.

Senator CONNOLLY (*Ottawa West*): No, that does not answer Senator Lang because he put another question. I think the answer to Senator Lang's question is that when you pay into pension plans you pay up to a maximum and you are allowed a deduction up to a maximum, and then when that plan begins to pay the pension you have to pay the tax on that pension.

The ACTING CHAIRMAN: I speak subject to what Mr. Thorson has to say, but I think the answer to your question is if you pay more than your maximum and do not, therefore, get any reduction of income tax, your pension is still taxable. Is that your understanding, Mr. Thorson?

Mr. THORSON: Yes. I think the basic proposition is that a pension of this nature, whether it is derived through a statute or as a result of a contractual relationship with an insurance company, is taxable for income tax purposes when received. The act provides, however, an amelioration as regards the contributions, in that it permits up to \$1,500 a year—which I think is the current ceiling although somebody said it was \$2,500—to be deducted in any one year. To the extent that that amount is exceeded then it is simply not deductible.

The ACTING CHAIRMAN: Have we covered all of Part III? Senator Fergusson?

Senator FERGUSSON: I should like to make a comment with respect to section 16, and perhaps ask a question on it. I might say that I am very happy that this legislation provides for annuities to senators because I am sure we all know of instances when a senator has died and left an aging widow in circumstances that were quite difficult, and at a time when perhaps she needed more money than she needed earlier. I should like to ask a question

of Mr. Thorson. Article III of the United Nations Convention on the Political Rights of Women provides that women shall be entitled to hold public office and to exercise all public functions established by national law on equal terms with men without any discrimination. In view of the fact that the only reservation that Canada made when she acceded to this related matters under provincial jurisdiction, can you explain, Mr. Thorson, why in this legislation, although provision is made for the payment of an annuity to widows, there is no similar provision with respect to the widower of a senator. I feel that this is discrimination on the basis of sex, and contrary to Article III of the Convention on the Political Rights of Women.

I have read the Members of Retirement Retiring Allowances Act, and I think it also discriminates against the women members of Parliament.

The ACTING CHAIRMAN: Section 11(6) provides:

For the purposes of this section and section 14, "widow" includes "widower".

I am referring to the Members of Parliament Retiring Allowances Act.

Senator FERGUSON: I am sorry.

The ACTING CHAIRMAN: I think what you are objecting to is a discrimination in this case, in favour of the women and against the men.

Senator FERGUSON: It is a discrimination against the lady senators—I prefer that word instead of "woman". I think in respect of much legislation it is time for Canada to consider closely whether equality is being maintained in matters affecting the federal Government. This is a case of where discrimination has entered into legislation.

Mr. THORSON: Perhaps I might make one general observation which perhaps does not directly answer your point. It is surely necessary to gear pension legislation of this sort to the particular social and other circumstances that face us. I feel a fairly good example of this is the recent Canada Pension Plan, which in the very nature of things had to take into account the current realities of life in Canada. These are not immutable conditions, but they pertain at the moment. I am sure you will recall, Senator Fergusson, that in that legislation provisions had to me included that would give protection to widows of contributors on a basis that was not granted reciprocally so far as widowers are concerned. The legislation was in that case simply taking into account the circumstances which had to be met.

Senator FERGUSON: Mr. Chairman, may I remind Mr. Thorson that although I said nothing in the committee, because I was a joint chairman, I did speak to him personally about this same subject, and would certainly like him to note that.

Mr. THORSON: I will indeed, Senator.

Senator THORVALDSON: Mr. Chairman, coming back to the matter I raised in regard to the requirement of this one year option that had to be exercised within one year, I gathered from Senator Power's remark that the reason for the one year limitation was to get away from the problem of deathbed marriages?

Senator POWER: That was my reason. I don't know the Government's reason.

Senator THORVALDSON: If that is the case, I want to refer to subsection 3 of section 16 which is in its very nature a protection against this very thing that Senator Power gave as a reason. You will note that subsection 3 says:

No annuity shall be granted under this section to the widow of a person who was granted an annuity under section 15 if the widow married such person after he resigned his place in the Senate.

In other words, that section does away with the reason given by Senator Power and cannot be applied to these deathbed marriages that are known so well in regard to military pension situations.

The ACTING CHAIRMAN: I think Senator Power was referring to a marriage before a senator resigned.

Senator THORVALDSON: But actually there are here only a few persons who could be involved in a matter of this kind, and one would think it somewhat beneath the dignity of a senator to take advantage of such a situation.

The ACTING CHAIRMAN: Well, it is still Senator Power's view. Have we had sufficient discussion? Senator Gouin?

Senator GOUIN: Is the pension of the widow subject to estate duty?

Mr. THORSON: I should think it would be in the usual way.

The ACTING CHAIRMAN: You have passed sections 1 and 2. Section 3. Shall section 3 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 10 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 11 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 12 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Part III section 13. Shall section 13 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 14 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 15 carry?

Senator CHOQUETTE: Mr. Chairman, with regard to section 15(a) I am of the opinion, with Senator Roebuck and others, that the section should read as follows:

The Governor in Council may grant to a senator

- a) who has attained the age of 75 years, if he resigns his place in the Senate

and that the remaining words of that paragraph be deleted.

The ACTING CHAIRMAN: Are you making a motion to that effect?

Senator CHOQUETTE: Yes, I am.

The ACTING CHAIRMAN: That means that all the words following the word "Senate" on line 10 of page 5 will be deleted down to and including the word "age" on line 15. Is there any discussion on the motion? Have we had sufficient discussion?

Hon. SENATORS: Question.

The ACTING CHAIRMAN: All those in favour of the motion to strike out the words after the word "Senate" down to the word "age" in line 15? Contrary, if any? I declare the motion lost.

Senator CROLL: And paragraph (b) stays the same.

The ACTING CHAIRMAN: Shall section 15 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall section 16 carry?

Senator FLYNN: I have an amendment to section 16. I think, as has been explained, that Part III does not provide for an annuity to a widow of a senator who dies before resigning from the Senate, even if he has served for 15 years or 26 $\frac{2}{3}$ years, and I think that Part III should embody a complete pension scheme. I therefore move that paragraph 1 of section 16 be deleted and replaced by the following:

Where a person who was granted an annuity under section 15 dies, or when a senator dies in office before the expiration of the delay provided in paragraph (a) of section 15, the Governor in Council may grant to his widow an annuity equal to one-third of the annuity provided in said section 15, to commence immediately after his death and to continue during her natural life.

Senator CROLL: May I, in a preliminary way, suggest that the amendment is quite out of order. It appears to me that the amendment would be adding to the general context.

The Acting CHAIRMAN: Senator Croll raises a point of order that the amendment proposed by Senator Flynn is out of order. Is there any discussion on the point of order? Your point, Senator Croll, is that this involves an additional appropriation?

Senator CROLL: Yes, we all agree.

Senator FLYNN: I would agree, but before you decide that it is out of order, I will say that I just hope that the member of the Government who is with us here will move an amendment to this bill as soon as possible.

Senator ROEBUCK: May I ask a question? Does your amendment apply only within the year?

Senator FLYNN: Yes, within the year—well, to those who were for the time being making their decision; because it is unfair, some may take a year and die within the year, and then they have nothing.

The Acting CHAIRMAN: Senator Flynn has moved an amendment to section 16, and Senator Croll has raised a point of order that such a motion is not in order. My view is that if this amendment were adopted it would involve an additional appropriation from the consolidated revenue fund, and therefore would be contrary to the provisions of the British North America Act and beyond the power of the Senate. Consequently, I rule the amendment out of order.

Shall section 16 carry?

Hon. Senators: Carried.

The Acting CHAIRMAN: Section 17?

Senator FLYNN: I have an amendment to section 17, in view of the fact that where there is a contribution, I suggest there is no benefit payable by way of an annuity either to a senator who dies in office or to his widow.

I therefore move that section 17 be amended by adding paragraph (3) as follows:

When a senator dies leaving no widow, or leaving a widow to whom an annuity is payable under the terms of section 16, there shall

be remitted to the estate of this senator a sum representing the total of his contributions made under the present section.

That is practically the same provision as exists in section 14 of the Members of Parliament Retiring Allowances Act.

Senator CROLL: I move an objection, Mr. Chairman, on a point of order.

The Acting CHAIRMAN: Is there any discussion on the point of order?

Senator ROEBUCK: Perhaps the amendment could be changed in its form. The amendment suggested is that the Government shall repay the senator or his estate, which is out of order constitutionally but if the amendment were that the contribution shall not be made, it would be in order.

The ACTING CHAIRMAN: The motion by Senator Flynn, on the amendment to section 17. On the point of order taken by Senator Croll, is there any further discussion on the point of order?

Again, for the same reason as in dealing with the amendment under clause 16, such an amendment in my view would require an additional appropriation out of the consolidated revenue fund therefor and therefore is contrary to the British North America Act without a special resolution to the House of Commons from the Government and therefore it is beyond the power of the Senate and out of order.

Senator THORVALDSON: I disagree with that.

The ACTING CHAIRMAN: There is the right to appeal.

Senator THORVALDSON: I do not think it is correct. This simply provides for the repayment of money that was paid in and was in the nature of a loan, or circumstances of that kind. If your ruling was accurate, it would mean that the Government could at any time enact that senators shall be paid not more than \$1 a year and the Senate could presumably not defeat such a measure because we would be affecting revenue. I think that approaches an absurdity. Therefore, I submit again that your ruling, Mr. Chairman, is not valid.

The ACTING CHAIRMAN: Perhaps I should give more adequate reasons. I had rather assumed from Senator Flynn's remarks that he agreed that it was out of order. I have here, I think the best summary of our position with respect to financial legislation. It is an article by our Law Clerk, Mr. E. Russell Hopkins, which appeared in the *Canadian Tax Journal* September-October, 1958. It refers of course particularly to the Ross Report to the Senate, incorporating therein a memorandum prepared by Messrs. Eugene Lafleur and Aimé Geoffrion, two very distinguished counsel.

The opinion of that committee and of the counsel was that, while the Senate had power to reduce an appropriation, there was not the right to increase the same without the consent of the Crown.

In my view, in this particular bill the Crown must appropriate certain funds for the purpose of paying the obligations that are made by the act, and to the extent that the contributions are lessened by any amendment the appropriation required to carry out the act is that much greater. Therefore, by reducing these contributions, we would then be calling upon the Crown to appropriate that much more money to carry out the obligations.

I believe that this is an increase in the appropriation and the appropriation required and therefore is out of order.

Senator THORVALDSON: May I say this, Mr. Chairman. Supposing a future government comes to power and passes a law to the effect that the total indemnity of a senator, less \$1, should be paid into the consolidated revenue fund to provide for a pension or provide for anything else, will your ruling not apply to that identically the same way as it does to this item involving only \$720?

The ACTING CHAIRMAN: I think I should make it perfectly clear that the Senate has power to reject the bill.

Senator THORVALDSON: That is the principle which I am urging upon you. Similarly, I suggest the Senate has power to reject the suggestion that this amount be paid in, unless there is provision for it to be paid out in cases where there is no possibility of either the estate or the widow of a deceased senator deriving any benefit from that fund. I submit that you are abridging tremendously, and in a very serious manner, the powers of the Senate, if this committee accepts the ruling that you are making in this instance.

The ACTING CHAIRMAN: I want to make it perfectly clear that the Senate would have power to reject such a bill in whole.

Senator ROEBUCK: That is why I said, Mr. Chairman, that if the amendment were changed, so that the contribution was rejected—

The Acting CHAIRMAN: Shall we deal with that when we come to it?

Senator ROEBUCK: Might I add this, too? Some suggestion was made that if our indemnity were reduced, we would have no power to reject it. That is not so, because the indemnity has already been consented to by the Crown, it is statutory, it was passed, and when it was passed there must have been consent by the Crown.

The Acting CHAIRMAN: That is a hypothetical case. I am satisfied in my own mind that this would involve an increase in the appropriation. When this particular amendment came before the House of Commons it was preceded by a resolution because it did involve an appropriation. To the extent that we decrease the contributions, I think it would require an additional appropriation; and therefore it is beyond our powers.

Senator FLYNN: I submit you are going a bit too far, Mr. Chairman.

Senator CROLL: The question.

The ACTING CHAIRMAN: The motion has been ruled out of order. Shall section 17 carry?

Senator FLYNN: I have another amendment. I think you went a little too far in your ruling on the previous amendment. I suggest you may say that if the Governor in Council or the Governor is asked to refund contributions, then we are imposing a burden on the Treasury, that is true. But now I am going to move that section 17 be deleted entirely and that section 18 be renumbered 17.

I suggest that even by deleting section 17, if there is less money in the Treasury, that I am merely reducing the appropriation. It has always been the right of the Senate to vote against a tax—which is this contribution, under the circumstances—because when the bill was first read in the other place the pension of \$8,000 and the indemnity of \$2,666 was provided for a senator who at the age of 75 or after age 75 resigned his place in the Senate; or who at any time becomes disabled and resigns because of that. There was no contribution at all. We have these provisions to assist, if not induce, senators at age 75 or more, or disabled, to resign their place in the Senate. And that was all.

The contribution was added afterwards. As this contribution does not provide members of the Senate with an adequate pension scheme, I suggest that we should delete this clause 17 in order to give the Government a chance to bring in further amendments, or to bring in an amendment next year that would provide a complete pension scheme, and then provide at the same time for the contribution based on the benefits that we will draw therefrom.

Therefore, I move:

That clause 17 be deleted; and that clause 18 be renumbered 17. It would be an inducement to the Government to change the bill and correct it. Otherwise there would be no inducement at all.

The ACTING CHAIRMAN: Are you ready for the question?

Senator Flynn moves:

That clause 17 be deleted; and that clause 18 be renumbered 17.

All those in favour of the motion?

Those to the contrary?

I declare the motion lost.

Shall clause 17 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall clause 18 carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee adjourned.



Third Session—Twenty-sixth Parliament

1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 4

Complete Proceedings on Bill C-118,

intituled: "An Act to amend the Income Tax Act and the Federal-Provincial Arrangements Act"

TUESDAY, JUNE 29, 1965
WEDNESDAY, JUNE 30, 1965

WITNESSES:

Department of Finance: F. R. Irwin, Director, Taxation; R. Y. Grey, Director, International Economic Relations and Defence. *Department of National Revenue:* D. R. Pook, Chief, Technical Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Bouffard	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Kamloops</i>)
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lambert	Taylor
Crerar	Lang	Thorvaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis
Flynn	Molson	Woodrow—(50).
Gélinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 29th, 1965:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Power, P.C., for second reading of the Bill C-118, intituled: "An Act to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Power, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 29th, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.20 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Provencher*), Bouffard, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Farris, Fergusson, Flynn, Gouin, Hugessen, Irvine, Kinley, Lang, Leonard, McLean, O'Leary (*Carleton*), Pearson, Pouliot, Power, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Vaillancourt, Walker and Woodrow.—(27).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief, Committees Branch.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-118.

Bill C-118, An Act to amend the Income Tax Act and the Federal-Provincial Arrangements Act, was read and considered clause by clause.

The following witnesses were heard: *Department of Finance:* F. R. Irwin, Director, Taxation.

R. Y. Grey, Director, International Economic Relations and Defence.
Department of National Revenue: D. R. Pook, Chief, Technical Section.

The Motion of the Honourable Senator Flynn that clause 4 of the said Bill be amended by deleting new section 12A (2) was lost on the following division:

YEAS—5

NAYS—15

After discussion, Mr. Hopkins was directed by the Committee to submit an opinion with respect to the financial implications of an amendment such as that moved by the Honourable Senator Flynn.

At 10.20 p.m. the Committee adjourned.

WEDNESDAY, June 30th, 1965.

At 9.50 a.m. the Committee resumed consideration of Bill C-118.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Bouffard, Burchill, Cook, Croll, Flynn, Hugessen, Irvine, Isnor, Lang, Leonard, Smith (*Kamloops*), Willis and Woodrow.

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk, Parliamentary Counsel and Chief, Committees Branch.

The following witness was heard: *Department of Finance:* F. R. Irwin, Director, Taxation.

On Motion of the Honourable Senator Croll it was Resolved to report the said Bill without amendment.

At 10.25 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 30th, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-118, intituled: "An Act to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act", has in obedience to the order of reference of June 29th, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 29, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-118, to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act, met this day at 8.20 p.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: We have here Mr. F. R. Irwin of the Department of Finance, who is Director, Taxation. We also have Mr. E. S. MacLatchy, Q.C., Director of the Legal Section, Department of National Revenue, and Mr. D. R. Pook, Chief of the Technical Section, Department of National Revenue. Mr. R. Y. Grey, Director, International Economic Relations and Defence, Department of Finance, will deal particularly with the magazine tax portion of this bill.

Would you commence, Mr. Irwin?

Mr. F. R. Irwin, Director, Taxation, Department of Finance: I shall try to answer any questions.

The CHAIRMAN: Since we have had you here, and since you cannot say there is one principle in the bill except finding ways of taking money or giving a deduction, suppose we start section by section. In regard to section 1, have you any short comment?

Mr. IRWIN: Clause 1 makes a change in substance and also a change in form. The change in substance extends the exemption for representation or other special allowances received by individuals in respect of services performed outside Canada. It extends this exemption to people hired under contract by the External Aid office.

This particular amendment is related to an amendment proposed in clause 28, which proposes that people hired under contract by the External Aid office shall be deemed to be residents of Canada.

Senator CROLL: "People hired under contract—?"

Mr. IRWIN: People hired under contract by the External Aid office for service abroad in connection with a foreign aid program.

Senator CROLL: Of any nationality?

Mr. IRWIN: They will almost always be Canadians.

Senator CROLL: No, no. If Canada feels that there is a man somewhere—I will have him for the moment in Japan—that it wants in Japan to do this

particular work, and it hires him under contract because he is the most competent, do we confer upon him Canadian citizenship by virtue of his contract?

The CHAIRMAN: No. The test is that he was a resident of Canada at the time he was hired.

Senator CROLL: We can carry it now. We have a great number of Japanese out in British Columbia doing work in the mining areas. There may be a very competent engineer there who understands this work we want. We hire him. Does citizenship go with it?

Mr. IRWIN: No, sir.

Senator CROLL: That is not what you said when you started out.

Mr. IRWIN: If I might explain, sir, I was only referring—rather loosely, I must admit—to clause 28, which describes this in greater detail. I was referring to clause 28 because this first clause deals with representation allowances to be paid to these people. The proposal with respect to these people is to put them in the same tax position as diplomats or members of the armed forces who are posted abroad, and such people are taxed on their salary but not on their representation or special allowances. The clause we are dealing with now will provide this tax treatment with respect to the representation or special allowances paid to the people dealt with in the first part of clause 28.

The CHAIRMAN: I think we should deal with clause 28 at the same time.

Senator HUGESSEN: That is only during the first year? For example if a man resident in Canada in January, and in February is sent to Japan on some special mission and he stays there for three years, this only applies to the first year because only in the first year was he resident in Canada during part of the year.

Mr. IRWIN: Under the ordinary rules he might be resident in Canada throughout the duration of his employment, if he had been an employee of the Government of Canada or of a province before taking this employment or if he left his home here. On the other hand if he was not such an employee or if he moved entirely out of Canada and did not leave a home here he would cease to be resident in Canada. It is because of this lack of uniformity that the amendment is proposed in clause 28 to make such people resident in Canada throughout the term of their employment.

Senator CROLL: Are you trying to cover something here for the United Nations about which we have been having a great deal of controversy and trouble? They have been urging the matter that not enough of their people have been covered, and anyone who has any sort of position or title at all there should be given tax consideration.

Mr. IRWIN: No, this is not directly related to the United Nations. This is in connection with prescribed international development assistance programs. Canada provides assistance, including technical training, to quite a number of countries, and the Canadian Government through the External Aid Office hires teachers, technical experts and others in Canada and arranges, usually under a contract of employment for one or two or three years, to send these people to these countries to teach and instruct or help in some technical assistance program.

Senator CROLL: And these are the people you are trying to reach?

Mr. IRWIN: These are the people we are trying to cover.

The CHAIRMAN: Shall section 1 and section 28 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2.

Mr. IRWIN: Clause 1 provides that an individual who receives allowances—

The CHAIRMAN: In section 28 it is only clauses 1, 2 and 3 that relate to that subject matter. So it is only clauses 1, 2 and 3 of section 28 which are carried at this time.

Mr. IRWIN: In connection with clause 2 may I refer first to subclause (1) which provides that an individual who receives an allowance from his employer upon retirement or in respect of loss of office will not be required to include that lump sum in the year in which it is received, if he transfers it to a registered retirement savings plan or a pension plan or a deferred profit-sharing plan during the year, or within 60 days thereafter.

The CHAIRMAN: Shall that clause carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (2) deals with deductions.

Mr. IRWIN: Yes, and it adds a number of new paragraphs. For example new paragraph (x), the first one, provides a deduction for the amount payable by a taxpayer for the year as a contribution under the Canada Pension Plan or under a provincial pension plan as defined in section 3 of the Canada Pension Plan, and the new paragraph (y) provides for a deduction for expenditures made by a lessor to a lessee to obtain cancellation of a lease.

Senator PEARSON: Are there many of those?

Mr. IRWIN: Not many that would be covered by this particular amendment.

I understand that such payments, when they have been made in the past to change the tenant, have generally been allowed as an expense of earning rents, but when payments have been made to obtain free occupancy of an apartment so the property might be sold, this has not been allowed.

Senator PEARSON: This only affects federal legal jurisdiction?

The CHAIRMAN: No, any situation where it has occurred.

Mr. IRWIN: This affects taxpayers subject to the federal income tax.

Senator HUGESSEN: In the past this has been treated as a capital expenditure?

Mr. IRWIN: Yes, it has been disallowed as a capital expenditure.

The CHAIRMAN: Item (z).

Mr. IRWIN: This provides a deduction for the cost of landscaping property from which the taxpayer derives income or which is used in the taxpayer's business.

Senator PEARSON: Why was the change made in that? As it appeared in the resolution stage it was for the landscaping of property of the taxpayer. Now it is landscaping of buildings and structures.

Mr. IRWIN: We think this is more precise.

Senator PEARSON: It reduces the area covered. There was quite an argument in the other place about this.

The CHAIRMAN: The landscaping, I take it, refers to something that is on property. What else could you have other than a building or structure?

Senator PEARSON: Landscaping for irrigation purposes.

The CHAIRMAN: Any other question?

Senator PEARSON: I want to know what the purpose of this is. Does it cover all buildings, whether rural or federal?

Mr. IRWIN: There is no distinction made as to the location of a building. However, the building must be used in the business or for earning income.

Senator PEARSON: What does "structure" mean?

Mr. D. R. Pook, Chief, Technical Section, Department of National Revenue: It could be a building; it could be a dam—almost anything.

The CHAIRMAN: It could be a radio tower; it could be a bridge.

Senator HUGESSEN: If you landscape around the pigsty?

The CHAIRMAN: I suppose that might be a business.

Senator CROLL: A smelly business!

The CHAIRMAN: Are there any other questions, Senator Pearson?

Senator PEARSON: No, that is fine.

The CHAIRMAN: I think you had something on the next item about levelling and clearing.

Mr. IRWIN: Paragraph (aa) provides a deduction for the cost of making representations to governments in connection with the business carried on by the taxpayer.

Senator BURCHILL: Is that new?

Mr. IRWIN: In the past when a business sent its own employees to make representations I believe the expense was generally deductible because the employer deducted the salary or wages of those employees. But where someone in business paid an outside consulting firm or hired someone else who was not in his employ to make representations, I do not think it would have been deductible.

Senator BOUFFARD: Does that cover the expense of an appeal board case?

Mr. IRWIN: They are already covered.

The CHAIRMAN: We did that last year; we had an amendment—

Senator CROLL: Yes.

The CHAIRMAN: —permitting a deduction of expenses of carrying an income tax appeal to the Tax Appeal Board.

Senator FLYNN: Even though unsuccessful!

The CHAIRMAN: That is right. The next?

Mr. IRWIN: The new paragraph (ab) provides a deduction for the cost of investigating the suitability of a site for a building to be used by the taxpayer in connection with his business.

Senator CROLL: That seems to me so far out, I could not put it in the same context. What do they mean by that? That is not something a business does every day; it is a once-in-a-lifetime project.

Mr. IRWIN: Yes, but it might be a very important expenditure. For example, a power company might investigate four or five sites for building a power plant, or a hydro dam.

Senator CROLL: That is what I thought you had in mind. It was not meant to be for any people who were little people, but someone who is going to town.

The CHAIRMAN: Subsection 3 of section 2.

Mr. IRWIN: This amendment will insert the words "of subsection (1)". This is only for clarification, because section 5 has two subsections, each containing a paragraph (b).

The CHAIRMAN: All right. Then subsection 4 of this section 2.

Mr. IRWIN: Subclause 4 provides two new subsections. The first one, subsection 16, provides a deduction for levelling farmland and laying tile drainage on farm lands.

Senator PEARSON: I had five questions I asked. They covered specific items. That is, cutting down of timber for preparing the land, removing stones

or rock or removing fencing or old buildings or hedges. Does this cover all those items?

Mr. POOK: They would all be covered by clearing the land.

The CHAIRMAN: Any other questions on that? The second part of this?

Mr. IRWIN: The new subsection 17 recognizes that substantial costs may be incurred in preparing material to make representations to a government, and a taxpayer may not want to deduct the entire amount in the year incurred. This allows him to elect to have it deducted in 10 equal instalments.

The CHAIRMAN: Subsection 5 of this section is simply when it comes into force?

Mr. IRWIN: Yes.

Senator LEONARD: Have you made any estimate of the amount involved under all these remedial deductions in the way of taxation?

Mr. IRWIN: The deduction for the contributions to the Canada Pension Plan will, of course, amount to a substantial amount of money in several years from now. This will be in the order of \$80 million or more per year.

Senator LEONARD: I think we had that figure when we were discussing the pension plan. What about the others?

Mr. IRWIN: It is very difficult to make an estimate with regard to the others. Our best guess at this stage is in the order of \$2 million or \$3 million a year.

Senator LEONARD: \$2 million or \$3 million?

Mr. IRWIN: Yes sir.

The CHAIRMAN: Shall all these subsections under section 2 carry?

Senator COOK: In (aa) is the amount there to be paid to anybody at all when a businessman makes representations to Government, it does not say to whom the amounts are paid.

The CHAIRMAN: Whoever he employs to make representations.

Senator COOK: That could be practically anybody.

The CHAIRMAN: He would be silly to pay out money to anybody who could not do anything for him.

Senator CROLL: You have no idea how often people make mistakes.

The CHAIRMAN: The representations are made to the Government. Shall all of the subsections of section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3 of the bill.

Senator PEARSON: On number 2. Are these deductions allowable to the owner of the property in levelling or clearing land? If he did it himself, if the farmer did it himself rather than hire someone to do it for him, would he be able to deduct that as an expense?

Mr. IRWIN: This would be an operating expense on farm operations.

Senator LEONARD: If he did it himself there would be no deduction, would there?

Mr. IRWIN: Yes.

Senator PEARSON: It is not considered a capital expense if he does it himself?

Mr. IRWIN: Not if it comes under this wording.

The CHAIRMAN: Section 3?

Mr. IRWIN: Section 3 provides a relieving amendment. It refers to an amendment made to the act last year. When section 12(3) was repealed last

year certain transitional provisions were put in to cover amounts which a taxpayer might not have paid by the end of 1967. It was represented to the Government that this time limit was not adequate; that not all taxpayers would be able to pay the amounts referred to within this time, so this relieving amendment has been added to make more generous these transitional provisions.

They are rather technical. It does provide that certain expenses can be deducted before the end of 1967 if an agreement is entered into between the payor and the payee to the effect that the sum has been paid and returned as a loan.

Senator BOUFFARD: To what kind of transactions does it apply?

Mr. IRWIN: The situation where section 12(3) would have applied might be between a subsidiary and its parent company. The subsidiary might have shown amounts as owing to the parent company, but the law used to say that it could not deduct those amounts unless they were paid before the end of the year following that in which they were shown as being accrued.

The CHAIRMAN: Does section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: That is all with respect to section 3, is it not?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: We come now to section 4 which runs from page 4 to half-way down page 7. This deals with what we have designated as the magazine tax. I think this is where Mr. Grey comes in.

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Then we shall excuse you for the moment.

Mr. R. Y. Grey, Director, International Economic Relations and Defence, Department of Finance: Mr. Chairman, the key part of this section is obviously that which provides that no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a non-Canadian newspaper or periodical which is directed primarily to the Canadian market. That phrase "directed primarily to a market in Canada" is the same phrase that appears in the Customs Tariff item we discussed a few moments ago.

The CHAIRMAN: Yes, that is the general limitation. The next important thing is the exemption.

Mr. GREY: Well, I was going to suggest that, leaving aside subsection (2) for the moment, you might direct your attention to subsections (3) and (4) which exempt certain types of advertisements from the ambit of this section. Subsection (3) exempts those that appear in special editions of publications about Canada but which are not directed to Canada, which might be issued by a foreign publication. Subsection (4) exempts advertisements in catalogues and advertisements in certain types of publications such as those whose principal function is the encouragement, promotion or development of the fine arts. Again, these words are identical to those in the Customs Tariff item which you have just discussed.

Subsection (5) will be considered by some people as the heart of the section. This is the definition section. A portion of subsection 5 defines what a Canadian issue is. Paragraph (b) defines what a Canadian newspaper or periodical is, primarily in terms of its ownership and control. Paragraph (c) defines an issue of a non-Canadian periodical by saying it is an issue that is not a Canadian issue of a Canadian newspaper or periodical.

Then, subsection (2) to which I direct your attention, has been vulgarly called by the draftsman the "squatters' rights" subsection. It is intended to exempt from these provisions advertisements in publications that are already established in Canada but which do not meet the tests of Canadian ownership and control and which do not publish Canadian issues.

Finally, Mr. Chairman, I direct the committee's attention to subsections (6) and (7) which did not appear in the resolution but which were added in the bill. Subsection (6) deals with the problem that would arise if a periodical was owned by a trust or an estate. I think the solution here is a fairly obvious one.

Subsection (7) is intended to provide a significant grace period should some Canadian newspaper or periodical, perhaps through the death of its owner, suddenly could not meet the tests in subsection (5). It was felt that a period that would be sufficiently long to allow a publication to re-acquire Canadian ownership, if I may put it that way, should be allowed. We envisaged the owner of a Canadian weekly newspaper dying, and the newspaper left to a person who was a citizen of the United States and not a citizen of Canada. From the time of the probate of the will I would assume that the publication, in that case, could not meet the test of this section, so a twelve-month grace period is allowed.

Senator CROLL: Mr. Grey, go back to subsection (3) on page 5. The *New York Times* often carries a special edition or a special section. I have seen one on the Province of Quebec, and on another occasion I have seen one on the Province of New Brunswick. If the Province of Ontario wanted the same sort of insertion within the year, would it be prohibited?

Senator BOUFFARD: They are not prohibited. They are not taxpayers.

Senator CROLL: Would it come outside the exemption?

Mr. GREY: The phrase in the section is "and the publishers thereof publish such an issue or edition not more frequently than twice a year".

Senator CROLL: But I mentioned a third one, and asked you if it was prohibited.

Mr. GREY: I would have thought that an advertisement by a taxpayer in Canada, if it was an advertisement directed primarily to a market in Canada, would be an important test of fact to be considered.

Senator CROLL: It would have to be directed to a market in Canada?

Mr. GREY: Yes, the phrase "subsection (1)" is the operative phrase.

Senator O'LEARY (*Carleton*): Most of the advertising in the special editions of the *New York Times* is made up of Canadian advertisements directed to American consumers, and not to Canadian consumers.

The CHAIRMAN: Yes, that is right.

Senator LEONARD: And I think it appears in all editions of that particular issue of the *Times* circulated throughout the United States and Canada.

The CHAIRMAN: That is right.

Senator O'LEARY (*Carleton*): It is Canadian advertising addressed to the American market.

The CHAIRMAN: That is right. Do we come now to subsection (2), or have you dealt with that?

Mr. GREY: I merely said that the draftsman has called it the "squatters' rights" provision. I do not think there is much I can add.

The CHAIRMAN: I think it has been pretty well discussed. Are there any questions from members of the committee in respect of any part of subsection (4)? Senator Flynn?

Senator FLYNN: The first question I want to ask is in connection with paragraph (c). It seems to me that this is a sort of amendment to the definition of a Canadian newspaper or periodical. Does this mean that in the case of a newspaper which is the property of a trust or an estate, the beneficiaries of the trust or estate, or the partners, have to be Canadian citizens rather than

three-quarters of them as is required in respect of a partnership in subparagraph (ii) of paragraph (b) on page 6? In other words, would it be safer to have the newspaper held by a trust rather than a partnership?

Mr. POOK: It could be, senator but all the beneficiaries would either have to be Canadian citizens—

Senator FLYNN: "Each" means all.

Mr. POOK: Yes—or partnerships or corporations that meet the test.

Senator FLYNN: The requirement is more severe than that with respect to partnerships.

The CHAIRMAN: When it is analyzed I wonder if that is so. If the beneficiaries are individuals then each individual must be a citizen of Canada.

Senator FLYNN: Subparagraph "(b)" says—

The CHAIRMAN: Yes, you find that on page 6. If it is an individual he must be a Canadian citizen.

Senator FLYNN: Subparagraph (b) reads:

"Canadian newspaper or periodical" means a newspaper or periodical the exclusive right to produce and publish issues of which is held by one or more of the following:

- (ii) a partnership of which at least $\frac{3}{4}$ of the members are Canadian citizens and in which interests representing in value at least $\frac{3}{4}$ of the total value of the partnership property are beneficially owned by Canadian citizens.

That means that one-quarter of the partners could be United States citizens, and as long as they do not own more than one-quarter of the interests—

The CHAIRMAN: Yes, that is where there is a trust.

Senator FLYNN: Whereas, if you are dealing with a trust, all the beneficiaries have to be Canadian citizens.

The CHAIRMAN: No. What it says is that if the beneficiaries under the trust or estate are persons, then each one must be a citizen of Canada, but if the beneficiary is a partnership, association or society, so described, then it must conform to the requirements laid down on page 6 as to such partnership or association.

Senator FLYNN: If they are all persons must they all be Canadian citizens?

The CHAIRMAN: No. You find a definition of a Canadian periodical.

Senator FLYNN: With all due respect, Mr. Chairman, it seems to me that when you are dealing with individuals who are beneficiaries, if all of them are not Canadian citizens then they are not considered as such.

The CHAIRMAN: If the beneficiary is a partnership, the partnership will apply.

Senator FLYNN: I am not speaking of a partnership, but of a trust.

Senator LEONARD: Let us take the simple case of the present owner of a newspaper, dying and leaving four beneficiaries, who then own the newspaper. One of them lives in the United States and three in Canada. Now, section 6 overrides the provision of (b) and (ii) on page 6 of the bill, which says that "at least three-quarters of the total value of the partnership property are beneficially owned by Canadian citizens,"; because section 6 says each beneficiary is a person. That is the question, is it not?

Senator FLYNN: That is the question, Senator Leonard.

Mr. GREY: I think your explanation, Mr. Chairman, is correct. If the beneficiaries under the trust are individuals, then they have to be Canadian citizens; but if it happens to be a corporation it has to meet the test for a corporation on page 6 for partnerships.

Senator FLYNN: A partnership is not a corporation.

Mr. GREY: No, a partnership is dealt with separately, and then you refer to (b) and (ii) which describes the test a partnership must meet.

Senator FLYNN: But all four must be Canadian citizens.

Senator LEONARD: All four must be Canadian citizens.

The CHAIRMAN: Because they are all individuals.

Senator LEONARD: Yes.

The CHAIRMAN: But a partnership is a category specifically described, and only three-quarters have to be Canadian citizens.

Senator FLYNN: That is no reason why a partnership should be dealt with in a more lenient fashion.

The CHAIRMAN: Then let them join up and become partners.

Senator FLYNN: Oh, well!

The CHAIRMAN: Senator Gouin?

Senator GOUIN: I do not know how this applies, is it if the beneficiary is a corporation?

The CHAIRMAN: No. If the beneficiary is a corporation, then it must meet the test in paragraph (b), on page 6, which provides for a corporation that is incorporated under the laws of Canada or a province, and having a percentage of Canadian shareholders.

Any other questions on the items of this section?

Senator FLYNN: Referring to subsection (2) I would like to know from the witnesses if they know to which periodicals this can apply?

Mr. GREY: Well, sir, we assume it applies to *Time* and *Reader's Digest*. There are other publications but there is no legislation at the moment in Canada, I think, which would require information which would be available to other than the taxation authorities on the ownership and control of all publications. So there is no way of knowing about all publications. However there are certain weekly newspapers in western Canada owned by interests outside of Canada. I believe there is a commercial newspaper, publishing mainly business and commercial information, owned outside of Canada. This information is only at random, because there is no way of getting the kind of information required here, as matters now stand.

Senator FLYNN: You say *Reader's Digest* and *Time*?

Mr. GREY: Those are the principal ones. There are weekly papers now published in Canada, and one in Montreal. These are newspapers.

The CHAIRMAN: Any other questions?

Senator O'LEARY (*Carleton*): I am not going to make another speech, Mr. Chairman. You reminded me last evening and this afternoon that my own Prime Minister had contemplated legislation of this kind. I think that is true.

Senator CONNOLLY (*Ottawa West*): Who is your Prime Minister?

Senator O'LEARY (*Carleton*): We will come to that later. In the meantime, I will say that had he brought any legislation in of this category I should have opposed it with the vigour I am opposing this now. I am opposing the legislation. I think that we all here agree that we want to help Canadian periodicals. I submit, sir, that we are not helping them with these sections—with these exemptions here. We are legislating in these sections against competition that does not exist. If you leave these clauses in, we are legislating against unfair competition that does not exist. Now, surely what we want to do is to legislate against unfair competition that does exist, and that unfair competition exists only in *Time* and *Reader's Digest*. Therefore, as you say, sir, these are the two periodicals, and I am sure this is true. To be frank, cutting through all verbiage,

and so on, these clauses are aimed to exempt *Reader's Digest* and *Time* magazine. I say that if these exemptions are passed this legislation will be utterly meaningless and it will be legislating against competition that does not in fact exist and will not exist.

Therefore, Mr. Chairman, I move that these two sections be deleted.

The CHAIRMAN: Let me be quite clear. Are you referring to subsection (2)?

Senator O'LEARY (*Carleton*): Subsection (2).

The CHAIRMAN: All of subsection (2)?

Senator O'LEARY (*Carleton*): That is right.

The CHAIRMAN: Now we have a motion by Senator O'Leary that all of subsection (2) of the new proposed section 12A be deleted. So far as the Chair is concerned, my feeling is that I cannot accept the motion because it is tantamount to the imposition of a tax. Therefore, I must refuse to accept the motion.

Senator CROLL: Tantamount to the imposition of a tax?

The CHAIRMAN: Yes. If you remove an exemption, that is the effect of it. May I say that I consulted our Law Clerk in connection with this.

Senator POWER: If you remove this exemption, you therefore tax?

The CHAIRMAN: Yes.

Senator CROLL: If you remove the exemption?

Mr. HOPKINS: It is a taxing measure to tax.

The CHAIRMAN: So far as the Chair is concerned this is the ruling I make. Now, the proper procedure is to repeal the ruling.

Senator FLYNN: I think the proper procedure is to hear the arguments. I think before appealing, you should at least express your opinion, Mr. Chairman.

The CHAIRMAN: I have done so, and made the ruling. Now if you want to challenge that, that is fine.

Senator FLYNN: I am challenging the statement that the Chair should not make the ruling before listening to the arguments contrary to your view.

The CHAIRMAN: No. Having made the ruling—and you say you are appealing it—you are entitled to make any presentation you like in support of your appeal.

Senator FLYNN: I am going to make the following observations, that here we are dealing with section 12A, which says:

In computing income, no deduction shall be made in respect of an otherwise deductible outlay...

You are removing this exemption. That is all right. It is not an imposition of a tax, it is merely a rule as to the deduction, the refusal to admit a deduction which otherwise would be acceptable. By the amendment we are saying that this imposition will not be applied to the periodicals described in subsection (2). We are simply limiting the exception which is provided in section 12A.

The main principle, I think, is not under section 12A, but in the act when it says that an expense in earning income is deductible. I do not think it is a tax. Otherwise, Mr. Chairman, I submit with all due respect that we could never bring in an amendment because indirectly or directly we all agree that this measure is a plan of ways and means. I submit that if this amendment is out of order we could never move an amendment which could be in order.

Senator LEONARD: I am inclined to agree with Senator Flynn. As I see it, the situation at the moment is that XYZ Company, a company doing business in Canada, can advertise in *Time* magazine and claim that expense as a deduction. This subsection (2) will still allow that company to advertise in *Time* magazine and claim that deduction. There is no tax imposed and there is no

exemption taken away. What the section says is that the XYZ Company cannot advertise in *Newsweek* and claim it as a deduction.

The CHAIRMAN: No. You had better look at subsection (1) first.

Senator LEONARD: This is the submission I am making here.

The CHAIRMAN: If you do not want my help on it, that is fine.

Senator LEONARD: This section says that certain expenses for advertising are not deductible and certain other expenses are. It seems to me that Senator Flynn is correct.

The CHAIRMAN: I think you are overlooking some of the words in subsection (2) and therefore you are not paying any attention to subsection (1). Subsection (1) is the limitation of deduction.

Senator FLYNN: No, it is an exception.

Senator LEONARD: If you put both of them together, it would be clear to me that you are allowing certain expenses and disallowing other expenses.

The CHAIRMAN: May I state my point? I tried not to interfere with you. In subsection (1), if you are a non-Canadian periodical or newspaper, you are not entitled to make any deduction.

Senator LEONARD: It is not a periodical; it is the advertising.

The CHAIRMAN: The advertiser who pays for an advertisement.

Senator BOUFFARD: He cannot make the deduction.

The CHAIRMAN: He cannot make the deduction.

Senator BOUFFARD: Which he can make at the present time.

The CHAIRMAN: Yes.

Senator BOUFFARD: So we are not imposing a tax, we are just deducting one exemption.

Senator FLYNN: You are refusing the exemption.

The CHAIRMAN: In subsection (2) you say that even though it may be a non-Canadian periodical, that if it meets the conditions laid down in subsection (2) it shall not be deemed to be a non-Canadian publication and therefore it is entitled to deduct the cost of advertising.

Senator O'LEARY (*Carleton*): May I ask, as a layman, how is a new tax imposed? The way this happens is that we advertise. A man who buys his advertising actually pays more for it. He gets no exemption, so he pays more, it costs more. How does that increase taxation? It is not a tax, he simply pays more for the advertising he places in *Time* magazine. Is not that all there is to it?

The CHAIRMAN: No, Senator, there is more than that. If you are entitled to an exemption and if the exemption is taken away from you, that is tantamount to the imposing of a tax, is it not?

Senator O'LEARY (*Carleton*): It is a free choice. He does not need to advertise in *Time* magazine. This is not a compulsory thing. There are all sorts of alternatives. This is one of the things to ask—are there alternatives to *Time* magazine? All the advertiser says is, "I want to place an advertisement in *Time* magazine. I know perfectly well I am not going to be allowed the deduction, but I have a free choice." How do you change taxation that way?

Senator CONNOLLY (*Ottawa West*): I do not think anyone argues that way. As I see the situation, when he comes to make out his income tax return, let us say he is an individual or a corporation, he would normally be entitled to put down as a deduction, as an expense in business, the amounts he has paid out to *Time* magazine for advertising. That is allowed now under subsection (2). If subsection (2) is struck out, then this is annulling the deduction which is, as somebody has said here, the equivalent of taxation by that amount.

The CHAIRMAN: That is right.

Senator CONNOLLY (*Ottawa West*): Or perhaps not precisely that amount, but it would certainly add to his taxable income because you eliminate the deduction. That is the way I see it.

The CHAIRMAN: That is right.

Senator FLYNN: Then may I put a question and look for an opinion from the Chair and even from our Law Clerk? If I move to delete, in the case of XYZ, in section 2, subsection (2), you would have the same argument?

The CHAIRMAN: I am not dealing with that.

Senator FLYNN: In those sections we are granting exemptions and I could not vote against granting an exemption?

The CHAIRMAN: What I say is that I am not dealing with a hypothetical question.

Senator FLYNN: It is not a hypothetical question I am putting to the Chair; it is a very clear question that relates to a previous section of this bill.

The CHAIRMAN: Which we have passed.

Senator FLYNN: I am asking if there were an amendment which I moved to subsection (2) of section 2, would that have been out of order on the same grounds? I doubt it very much.

The CHAIRMAN: I am not dealing with that question.

Senator FLYNN: It is the same question exactly.

Senator O'LEARY (*Carleton*): There are other distinguished lawyers present. Have they no opinions to give?

The CHAIRMAN: The matter is open for discussion, before I put the question.

Senator HUGESSEN: I wonder whether the Senate has not got the right to change, that is, to decrease any deduction that comes to us in a taxation bill, if we want to do so?

The CHAIRMAN: But striking out subsection (2) is not increasing an exemption, it is removing an exemption, and exposing someone to tax who would not be taxable.

Senator HUGESSEN: Have we not the right to do that?

The CHAIRMAN: In my view that is tantamount to imposing a tax, and we have not the right to do that.

Senator POWER: That would apply to anything that came before us.

The CHAIRMAN: To decrease a tax?

Senator CROLL: It seems to me that we ought to defeat any objection on the basis of merits rather than on a ruling. I would like to defeat it on the other ground.

The CHAIRMAN: You can defer consideration of the ruling and deal with the matter on the merits.

Senator CROLL: I think that is the best.

Senator LEONARD: I would like to state my opinion, because I have disagreed with the ruling of the chairman on a legal question. I am opposed to section 4 in its entirety. I just want to have that recorded, that I do not like to have the xenophobia that is represented by this legislation directed towards non-residents.

All my life I have read newspapers and periodicals from all countries, various countries, particularly from the United States and the United Kingdom; and I think I am just as good a Canadian as anyone else, and perhaps a better Canadian than if I had been brought up reading periodicals under the kind of so-called permission that this section purports to give. This is the kind of legislation I would not like to see enacted by the United Kingdom

or by the United States directed towards any of our residents who happen to be interested in newspapers or periodicals in those countries, nor to Canadians who might be interested in other forms of business for which this might be a precedent. Although I disagree with your ruling and I think that this particular amendment moved by Senator Flynn is in order, nevertheless I am going to vote against his amendment, if it is put to a vote, because I am against the section as a whole; and consequently, bringing *Time* and *Reader's Digest* in does not meet it, from my standpoint.

Senator CROLL: I love that logic. I would agree.

The CHAIRMAN: That is really getting the best out of all worlds at the same time. You really have to be a genius to do that.

Are you prepared to deal with the motion and that we defer consideration of the ruling?

Senator CROLL: Yes.

The CHAIRMAN: All those in favour of the amendment deleting all of subsection (2), will you please raise your hands. Those who are opposed to the deletion? The motion is lost. It becomes unnecessary then to do anything about the chairman's ruling.

Senator CROLL: Forget it.

Senator POWER: We hope it will not be a precedent.

The CHAIRMAN: Shall section 4 carry?

Senator CROLL: When you made that ruling, I was set back immediately upon hearing it. I think it may not be a bad idea if the Chair, at the end, had an opinion presented by counsel and let us look at it. This may come up many times again and it shocked me a bit the way you put it. I am not so sure, except that I have great confidence in counsel. Let us have a ruling by him afterwards.

The CHAIRMAN: All right. Counsel will do that.

Senator CROLL: I think it will be very valuable.

The CHAIRMAN: We will get that written opinion for you.

Senator CROLL: There is no hurry. If the ruling is correct, we have not got any ways or means to delete any section in regard to income tax.

Senator LANG: Except administrative sections.

Senator FARRIS: When will we deal with the ruling?

The CHAIRMAN: The ruling has become unnecessary to the discussion because the amendment which provoked the ruling was defeated on the merits.

Now, section 4—shall section 4 carry?

Hon. SENATORS: Carried.

Some Hon. SENATORS: On division.

The CHAIRMAN: On division? I do not think there is any procedure for "on division" voting in committee.

Will those who support section 4 please raise their hands? Now will those who are opposed raise their hands?

Section 4 carries.

Now, Mr. Irwin, will you come back on the job dealing with section 5 on page 7.

Mr. IRWIN: Section 5 is consequential upon paragraph (aa) which I discussed a few moments ago and which allows the taxpayer to deduct expenses in making a representation. Some of these may be on account of the cost of depreciative property and so would ordinarily be part of capital

cost of depreciative property. This amendment is intended to prevent double deductions under two headings.

The CHAIRMAN: Shall this section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 6.

Mr. IRWIN: Section 6. The first subsection of section 6 allows a deduction for supporting a niece or nephew of a taxpayer or of the taxpayer's spouse, and the second part of the clause allows a deduction for amounts spent to support an aunt or uncle of the taxpayer or the taxpayer's spouse.

Senator LEONARD: Taking the first part, (ca), is there any person who really qualifies for all these conditions? Do you really run into any situations where all of these conditions in fact exist? Or is there just one such case? It is an extraordinary kind of measure to put in all these provisions as to what the niece or nephew has to do to qualify.

Mr. IRWIN: I think this situation does arise. Perhaps it does not arise frequently, but the conditions are placed in here in an effort to restrict this to situations where the taxpayer will be called upon to support a nephew or a niece. I think the Government felt that allowing a taxpayer a deduction for supporting a nephew or niece was going quite a way beyond the family circle, but there are situations where the taxpayer must support the child of, for example, a widowed sister.

Senator BOUFFARD: I wonder why the clause was in paragraph (iii) where it says:

the father of the niece or nephew, as the case may be, was deceased and the mother was not remarried,

If she was remarried does it mean that the new husband is of necessity a man of means and can support her sons and daughters? A remarriage is not always a sign of wealth.

Mr. IRWIN: No, but it is usually assumed that if there is a father of children he and not someone else is responsible for their support.

The CHAIRMAN: In this case you are talking about a stepfather.

Senator BOUFFARD: Yes.

The CHAIRMAN: I suppose the stepfather might be closer to the children if he married the mother than the taxpayer would be.

Senator BOUFFARD: It doesn't mean that he has means.

The CHAIRMAN: No, not necessarily. Mr. Irwin, you were going to say subsection 2 deals with the relationship of aunt and uncle.

Mr. IRWIN: Yes.

The CHAIRMAN: And the position is that they must be dependent upon the taxpayer and unable to support themselves.

Mr. IRWIN: That is correct.

Senator LEONARD: To make it perfectly clear, I take it that paragraphs (i), (ii) and (iii) are alternative provisions and only one is required in order to qualify.

Mr. IRWIN: That is correct.

Senator HUGESSEN: Mr. Chairman, may I refer to the effect that the ruling which you proposed to give a few minutes ago would have upon this section of the bill? Suppose the Senate decided that the exemption provided by section 6 should only be applicable in the case of a niece and not in the case of a nephew, and suppose a senator moved an amendment to strike out the word "nephew" wherever it appears in this section, would you rule that such

an amendment was out of order because it would have the effect of increasing the tax payable by a taxpayer who supported a nephew?

The CHAIRMAN: As far as I am concerned in law the question is academic. As far as the Law Clerk is concerned he will enlarge his opinion to deal with that and any suggestion that may be made.

Shall subsections 1 and 2 of section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection 3?

Mr. IRWIN: The new paragraphs (e) and (f) provide that the additional exemption of \$500 now allowed to a taxpayer attaining the age of 65 will not be allowed to taxpayers under the age of 70 who receive the old age security pension.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection 4 on top of page 9—these are subsections 4, 5 and 6 and I think they are consequential.

Mr. IRWIN: Yes. They are related to this deduction allowed for nieces, nephews, aunts and uncles, and deal with the case where two or more persons support an aunt or an uncle, or a person claims married status because he supports a child.

The CHAIRMAN: Shall subsections 3, 4 and 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection 6—I think this makes these amendments applicable in 1965?

Mr. IRWIN: Yes.

The CHAIRMAN: Subsection 7—this is also a consequential section. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 7?

Mr. IRWIN: This amendment provides that a taxpayer will be allowed to deduct trade union dues and professional fees in addition to the \$100 standard deduction.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 8 on top of page 10.

Mr. IRWIN: This clause provides two amendments both of which might be described as tidying-up amendments. They make no change in substance. Paragraph (c) being repealed is not necessary and it might be misleading. The deduction referred to is allowed by another paragraph of the subsection. Subsection 10 probably should have been changed in 1958 when the regulations governing depletion allowed in respect of dividends from non-resident companies was amended.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 9.

Mr. IRWIN: This provides for the tax reduction of 10 per cent of basic tax.

Senator FLYNN: I have a question on that. I understood this reduction of 10 per cent or \$600 is made from the return before the deduction of the part of the tax payable to the province.

Mr. IRWIN: This tax deduction is designed so as not to reduce the base on which all the provinces except Quebec impose their tax.

Senator FLYNN: It would have the same result in Quebec also; it would not decrease the share.

Mr. IRWIN: It does not decrease what we call the provincial abatement for taxpayers in Quebec.

Senator FLYNN: Then is my understanding correct that this 10 per cent in fact is more than 10 per cent of the tax that would go to the federal government?

Mr. IRWIN: Yes, computed as a percentage of the actual or net tax paid to the federal Government it is more than 10 per cent.

The CHAIRMAN: How much more, would you say?

Mr. IRWIN: I think the percentage is 12.5—I have forgotten the exact figure.

Senator FLYNN: What is the percentage deductible for the provinces other than Quebec? Is it 20 or 21 per cent?

Mr. IRWIN: The provincial abatements in all provinces except Quebec in 1965 is 21 per cent of the basic tax.

Senator FLYNN: So if you pay \$6,000 in tax altogether, you get a reduction of \$600, and out of this there is a little over \$1,200 that goes to the provinces, therefore you get \$600 on \$4,800.

The CHAIRMAN: That is more than 10 per cent.

Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 10?

Mr. IRWIN: Subclause 1 is intended to prevent a double deduction. You will recall that an earlier amendment provided that lump sum payments received as a retiring allowance need not be taken into income if transferred into another pension plan. This amendment is intended to make sure a taxpayer having made such a transfer may not also have an equivalent amount taxed at the favourable rate provided by section 36.

The CHAIRMAN: He cannot have it both ways.

Mr. IRWIN: Subclause 2. This imposes a limit upon the amount that may be taxed under section 36. Section 36 of the act provides that a taxpayer may elect to take certain lump sum withdrawals from pension plans or deferred profit-sharing plans or amounts paid as retiring allowances, and have them taxed as a separate piece of income at a rate computed by reference to the taxpayer's average rate of tax. That is, his tax over his income in the previous three years. This amendment will limit the amounts that may be taxed in accordance with this favourable formula.

The CHAIRMAN: He can take any amount that he is able to get away with out of the pension plan, but he could only get the favourable rate, either \$1,500 multiplied by the number of years of membership of a plan, or \$1,000 multiplied by the number of years of employment.

Mr. IRWIN: It is \$1,500 multiplied by the number of years of membership in the plan.

Senator CONNOLLY (*Ottawa West*): But if he takes an amount over and above the limit, I take it it is taxable in the year in which he receives it?

The CHAIRMAN: It would be, but if he turned around and then paid it into another retirement or pension plan he would be exempt again, wouldn't he?

Mr. IRWIN: Yes, this does not disturb his right to transfer amounts into another pension plan or retirement savings plan.

Senator POWER: I am not an economist at all, but it occurs to me there might be some application to cases I have heard of. In the Department of National Defence retirements are effected pretty frequently. They call it the

"golden Bowler", which I think is a payment to quite senior officers who are being retired on something equivalent to a year's pay—let us say \$15,000 or \$18,000. This payment may occur at the same time as he earns \$20,000 or \$18,000 of salary. Apparently there has been some complaint that these fellows have to pay double income tax.

The CHAIRMAN: No, he can avoid that.

Senator POWER: Can he avoid that?

Mr. IRWIN: There is a further clause which deals with that sort of payment.

Senator POWER: How do you deal with it?

Mr. IRWIN: At the present time I think if he transferred the lump sum payment to another pension plan or registered retirement savings plan while he was a member of the forces he would be able to get an adjustment. He would not be taxed on it under the existing rules, and he would, of course, get an adjustment because it was not subject to tax. But if it was done after he leaves the services, there is an amendment in this bill to give him the same privilege as the people we have been discussing who get a lump sum payment upon retiring and who transfer it to another pension plan.

Senator POWER: So he could, if he were careful about it and knew what to do, arrange that he did not have to pay on \$30,000 or \$40,000 in the one year?

The CHAIRMAN: That is right.

Senator BOUFFARD: On the other hand, he could not use that money for establishing himself or buying some kind of business. If he does, he cannot come under that.

Senator POWER: If he did that he wouldn't have any money to put in there, because they take it off in income tax.

Senator BOUFFARD: Unless you put it in a pension plan.

The CHAIRMAN: Subsections (1) and (2), shall they carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What is the next part of this, Mr. Irwin?

Mr. IRWIN: I think that finishes clause 10. It is a long and complicated clause, because people might be members of more than one plan.

The CHAIRMAN: Shall clause 10 in its entirety carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Page 14, clause 11.

Mr. IRWIN: This takes into account the change in the title of another act referred to in the Income Tax Act.

The CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 12?

Mr. IRWIN: This will provide authority for the Minister of National Revenue to enter into an agreement with a province for the transfer of over-deductions of individual income tax from a province to the federal Government, or from the federal Government to a province.

The CHAIRMAN: I think I mentioned the other day that if a man lives in Ottawa and works in Hull, or lives in Hull and works in Ottawa then you have two rates of provincial deduction, and they would have to be adjusted. Isn't that right?

Mr. IRWIN: Yes, that is so. At the present time there is authority under the tax collection arrangements for the transfer of amounts collected as provincial taxes, but 1965 is the first year in which the rate of federal tax will be different in Quebec than in Ontario. This will give authority for over-deductions of

federal tax to be transferred to Quebec. And we anticipate it will permit over-deductions of Quebec tax to be paid to the federal Government where a resident of Ontario works in Quebec and has had Quebec tax deducted and not enough federal tax.

Senator FLYNN: I understand that as far as the members of the Senate are concerned the provincial tax deducted from the indemnity is paid to Ontario, and thereafter there is to be a transfer from Ontario to the province of residence.

Senator HUGESSEN: Yes.

Senator FLYNN: Does that section cover this problem?

Mr. IRWIN: It would certainly, I think, cover that problem. I assume the statement you have made is right; I am not familiar with the problem.

Senator HUGESSEN: Yes. All of us who are residents of Quebec got a statement from the Income Tax Department stating that a certain part of the deductions from the indemnity had been paid to the Province of Ontario, and that Ontario was going to pay it over to the Province of Quebec and be able to take it as credited in Quebec.

The CHAIRMAN: Does section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: You have dealt with the explanation of that section, haven't you, section 12?

Mr. IRWIN: Yes.

The CHAIRMAN: Section 13, at the bottom of page 15—this is something that has to do with liberalizing the Tax Appeal Board regulations. I should think everybody would be in favour of that. Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 14 is in the same tenor. Does section 14 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: That brings us to section 15, which deals with trusts. I gave some explanation of this last night, but would you tell us about it in your own words, Mr. Irwin?

Mr. IRWIN: This changes the special rules for determining the income of a trust to provide that a trust that earns income may not deduct any amount paid or payable to certain beneficiaries. The purpose of the amendment is to prevent non-residents who carry on business in Canada from restricting the total Canadian tax on the business profits to the 15 per cent non-resident withholding tax.

The CHAIRMAN: Does that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 16 on page 18?

Mr. IRWIN: This is a relieving amendment, and it is the one I was referring to a moment ago. It will give members of the armed forces who transfer a gratuity or termination allowance into a pension plan or a registered retirement savings plan in the year in which they receive equivalent tax treatment to that now available to other taxpayers.

The CHAIRMAN: Does section 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 17—this deals with those sections under which were set up designated areas and new businesses a few years ago. Just tell us briefly the effect of it, Mr. Irwin.

Mr. IRWIN: Yes, sir. As you explained in the Senate this amendment has been made necessary because it is now two years since the date that was

used when section 71A was placed in the law, and unless the requirement placed on new machinery is brought up to date the section may be used in ways that were not originally intended.

Senator LEONARD: This is going to have to be carried on from year to year, is it not, because the same thing is going to happen with respect to machinery purchased after June 18, 1965.

Mr. IRWIN: Yes, sir, if this is extended for more years this problem will arise again.

The CHAIRMAN: Shall section 17 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 18. This is beneficial.

Mr. IRWIN: Yes, sir, this is a relieving amendment. It provides that the limitation on the amount of earned income that a taxpayer may deduct as a premium under a registered retirement savings plan shall be increased from 10 per cent to 20 per cent. The overall dollar amounts that a taxpayer may deduct have not been changed, but the amount expressed as a percentage of earned income is being increased.

Senator HUGESSEN: It really benefits only people of low income?

Mr. IRWIN: They would be the chief beneficiaries.

Senator BOUFFARD: The maximum amount is \$2,500?

Mr. IRWIN: Yes, if you are not a member of a pension plan. If you are a member of a pension plan your overall contribution to both plans remains at a maximum of \$1,500.

The CHAIRMAN: Does section 18 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 19. This is the prospectors section that we had some discussion about today in the house.

Mr. IRWIN: This amendment is in two parts. The first deals with amounts received by a prospector and the second, which is in subsection (3), deals with amounts received by a person who finances the prospector.

The amendment is intended to restore the law to what it was thought it provided before a decision of the courts. It concerns amounts received by prospectors, or companies who finance prospectors, in return for mining claims. The law permits such amounts—that is lump sum payments or shares—to be excluded from income by the prospector. It is not intended that a flow of income such as royalties should be exempt from tax in the hands of the prospector. The courts interpreted the law a year or two ago to say that it did exempt a flow of income such as royalties.

The CHAIRMAN: That is, they interpreted the language of the sections as it then was as including rents or royalties?

Mr. IRWIN: Yes. The amendment is intended to restore the law to what it was thought it provided before the court decision, and to make clear that amounts received as royalties or similar payments must be taken into income.

Senator LEONARD: What was the case?

Mr. IRWIN: *Bolduc*.

Senator LANG: Was the *Bolduc* case a royalty payment case?

Mr. IRWIN: Yes, sir.

Senator LANG: What is the difference between a lump sum payment and a royalty payment?

The CHAIRMAN: A royalty payment is paid out of production.

Senator LANG: It does not mean it is income.

Senator LEONARD: Normally, a man selling his claim had a right to elect to take one of two kinds of payment, one being a capital sum and the other being a sum payable over a period of time. Now, if such a contract was in existence up to now is this section retroactive so as to make something taxable which hitherto has been recognized as not being taxable? I am speaking of a transaction entered into before this act comes into effect.

The CHAIRMAN: You have the decision of the Supreme Court of Canada.

Senator LEONARD: Does that decision hold in respect of that particular case, for example?

Mr. IRWIN: Yes, except it does not affect payments made before this law comes into effect.

Senator LEONARD: I would hope you would not go that far.

Mr. IRWIN: It depends upon one's interpretation of the word "retroactive". In that sense it is not retroactive, but it will make taxable payments received under an agreement that might have been signed before this becomes law.

Senator BOUFFARD: That is not very reasonable because a man who has made a contract in accordance with the law as it existed at that time may now be receiving much less.

Senator LEONARD: That is right. Had he known the law was going to be changed he might have sold for cash or shares instead of having his payment on a royalty basis.

Senator HUGESSEN: If the contract was made before the judgment in the case he must have thought he was taxable.

Senator LEONARD: The payment may not be taxable, apart from that case.

Mr. IRWIN: I do not know that anyone would have a right to believe that the law would not be changed. One can put forward various views as to what is or is not retroactive legislation. One view is that it is not retroactive to change the tax rules with respect to payments from now on. No one has a right to expect that taxes on his income will never be changed.

The CHAIRMAN: Is there any person who is so naive as to believe that?

Senator LEONARD: I have never heard the Income Tax Branch argue in that way.

The CHAIRMAN: Mr. Irwin is from the Finance Department.

Senator BOUFFARD: A person might have made a contract on a certain basis, but had he known this was going to be the law he would have taken shares and perhaps made a much bigger profit on the shares, or he may have taken a lump sum payment.

Senator FARRIS: I would like to know if it is a principle recognized by this committee against retroactive legislation.

Senator BOUFFARD: It is retroactive in certain cases.

The CHAIRMAN: We first have to define what is retroactive. If I impose a tax this year and say it shall apply on income that you have received last year and the year before, and the year before that, then that is definitely retroactive. But, if I have a contract, and under the law at the time the contract is made the proceeds that come to me from it are not taxable. Then, if suddenly in 1965 the law is changed and the proceeds are made taxable, in my view, that is not retroactive legislation.

Senator BOUFFARD: Well, for the taxpayer it is retroactive, because he has not got what he should have got. What choice is he going to make? Is he going to take shares, yearly payments or a cash payment? How can he decide?

The CHAIRMAN: All he can do is to get the best advice he can, and if he does not want to pay income tax on the royalties in 1965 perhaps he can make a new deal with the company.

Senator LANG: If a prospector died while royalties were in flow how would his estate be affected?

The CHAIRMAN: You mean from herein?

Senator LANG: The section of the act says you have to take income as a lump sum payment.

Mr. IRWIN: The right to receive royalties is a valuable asset. These things are even bought and sold, I believe. The right to receive royalties may have a marketable value. An asset of that kind passing on death would be subject to estate tax.

Senator LANG: I am not talking about estate tax, I am talking about the nature of those payments in the hands of his executors. I think the income tax authorities recognize under—I think it was section 72—that receipt of future payments like that by his executors are capital in the hands of his executors and require the executors to place a present value on those future receipts and to pay tax on that whole amount as though it were received in one year. If that section would apply and this section also applies simultaneously, he would be paying tax on the capitalized value of all his future payments, plus the income thereon afterwards, as they were received.

The CHAIRMAN: Any other questions?

Senator LANG: It seems to me a very dangerous problem in that area.

The CHAIRMAN: Have you anything to say, Mr. Irwin?

Senator FARRIS: I have not got the answers to my questions.

The CHAIRMAN: Well, Mr. Irwin is here to answer questions.

Senator FARRIS: I wanted to ask about the general policy relating to retroactivity.

The CHAIRMAN: I do not know that this committee has laid down any general policy that is applicable in relation to all situations. I would think the committee provides the basis to deal with legislation that comes before it, and in terms of that looks at what the problems are. We have no ground rules in the sense that we say anything that is retroactive we are going to strike out—because some retroactivity may be beneficial.

Senator FARRIS: All right.

The CHAIRMAN: Shall the section carry?

Senator BOUFFARD: Is there any possibility that this section would not apply to existing contracts?

Mr. IRWIN: Not under this bill sir.

Senator BOUFFARD: Would the Minister agree to an amendment?

Mr. IRWIN: I cannot answer that directly, but I can tell the committee that this question of whether this should apply to existing contracts was considered by the minister when these amendments were being examined, and this was his considered decision.

Senator HUGESSEN: The only man that might conceivably have any complaint would be the one who made these contracts after the judgment came out.

Senator BOUFFARD: I am speaking of the man who has a contract of that kind now that was not taxable at the time.

Senator HUGESSEN: But until the judgment comes out everybody considers it to be taxable.

Senator LEONARD: Bolduc would have a complaint—the man who took the case. He has won his case on a point of law and now the law has changed.

The CHAIRMAN: Well, that has happened before, senator, and I am sure it will happen again.

Senator LEONARD: Yes, but it is not fair. I think we should register that view.

The CHAIRMAN: Yes.

Senator FLYNN: In some cases it could be argued that what appears to be a royalty is only part of it, and part of it is capital. I do not think this provision would prevent such an argument either to the Department of Revenue or before the appeal board of the courts.

The CHAIRMAN: I think that is right, senator. Is there anything further you wanted to say on that, Senator Leonard, so that the record is sufficiently strong on that point?

Senator LEONARD: I think it is pretty well covered, Mr. Chairman.

The CHAIRMAN: Section 20?

Mr. IRWIN: Section 20, subclauses (1) and (2) provide a relieving amendment, and they correct what might have been an oversight when this part of the law was passed in 1962. In 1962 the act was amended to provide that an individual or corporation not in the oil or gas business could deduct exploration and drilling expenses, but a ceiling was placed on the amount of exploration and drilling expenses, and that ceiling was income from oil or gas wells.

The CHAIRMAN: In Canada?

Mr. IRWIN: Yes, income from operating oil or gas wells in Canada.

The law also provides that proceeds from the disposition of oil or gas rights must be included in income; but up until now it has not provided that this kind of income, that is, the proceeds from the disposition of oil or gas rights would be classed as income from oil or gas wells.

The CHAIRMAN: So you could not use it for these deductions, could you?

Mr. IRWIN: Could not use it to increase your ceiling against which exploration and drilling expenses could be deducted.

The CHAIRMAN: That is subsections (1) and (2)?

Mr. IRWIN: Yes.

The CHAIRMAN: Shall subsections (1) and (2) of section 20 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We go now to subsection (3).

Mr. IRWIN: This act adds two new subsections. The first new subsection (5a) is an amendment for clarification. It brings the description of an oil or gas right more nearly into line with the terminology used in the industry.

The new subsection (5ab) is intended to plug a loophole whereby an oil or gas right could be acquired by a joint exploration company and this exploration and drilling cost then transferred to the parent company. The use of a joint exploration company is more suitable in the case of exploring for minerals, because the amounts paid for mineral rights are not classed as exploration and drilling expenses, and the proceeds therefrom are not taken into income upon disposal or sale.

Subsection (5ab) is a rather complicated amendment. The amendment itself looks simple enough, but the devices that it is intended to prevent are rather complicated.

The CHAIRMAN: I understand there is a device under which if you set up a subsidiary company, non-resident, and then you sold the gas or oil rights to that company, and ordinarily the costs that were related to that would go with it, but then the subsidiary would renounce those costs back to the parent, and the parent would use them against income. Is that not the sort of loophole you were trying to cover?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: And it takes all those words that run through page 23 of the bill to deal with that situation?

Mr. IRWIN: No, sir. The amendment we are talking about only goes to the bottom of page 22. A new paragraph (5b) is added by subclause (4) starting on page 23. This is another amendment which is designed to plug a loophole.

The act at present allows certain kinds of corporations to deduct the cost of acquiring gas or oil rights. Under the present law if the kind of corporation becomes another kind of corporation when it sells the oil or gas rights, it may not have to take the proceeds into income. The purpose is to provide that if a company had the right to deduct the cost of acquiring these rights it must take the proceeds into income when it disposes of them, even though it may have become a different kind of company at the time of disposal.

The CHAIRMAN: That is subsection (4) on page 23, is that right?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: And subsection (5)?

Mr. IRWIN: There is a new subsection (5f) added by subclause 5. This is for simplification. It is intended to relieve people who are traders from having to account for their income in the same way as people who are in the exploration business and who deduct the cost of acquiring rights and take the proceeds into income.

The CHAIRMAN: Shall subsection (5) carry?

Hon. SENATORS: Carried.

Mr. IRWIN: There is a new subsection (8e) added by subclause (6), which meets a request from the industry for clarification of a deduction that is already in the law.

The CHAIRMAN: So you do not take away anything or add anything, you just change the description?

Mr. IRWIN: That is right.

The CHAIRMAN: Then subsection (7) simply makes the whole section applicable to 1965 and succeeding years.

Shall all of section 20 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now we have section 21, which is an annual thing we have in the Income Tax Act.

Mr. IRWIN: It has been an annual amendment up until now. This year it is an amendment to section 85c of the act. I think the suggestion has been made in this committee that it should not be put in every year, but should be added to the act.

The CHAIRMAN: This deals with children of new Canadians?

Mr. IRWIN: It deals with family assistance payments made for the children of new Canadians. The substance of the amendment is to require that children in respect of whom family assistance payments are made should be treated in the same way as children in respect of whom family allowance payments are made.

The CHAIRMAN: Shall section 21 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 22.

Mr. IRWIN: The first part of this is to make it clear that a taxpayer is not required to deduct the full amount of the reserve that is allowed by law; and

the second part of it increases from one-twelfth to one-sixth the rate at which companies in the business of making loans on mortgages accumulate the reserve that they may hold against possible losses.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 23 is another one of those liberalizing provisions in relation to the Tax Appeal Board and the Exchequer Court.

Mr. IRWIN: Clause 24 is the same for the Exchequer Court.

The CHAIRMAN: Clause 23 deals with the Tax Appeal Board in that regard, in the matter of notices of appeal, where you do not conform to the regulations quickly, and dealing with replies. Clause 24 is in relation to the Exchequer Court, is that right?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Shall these two sections carry, sections 23 and 24?

Hon. SENATORS: Carried.

The CHAIRMAN: Then, section 25, on the top of page 26.

Mr. IRWIN: This authorizes the Minister of National Health and Welfare to give information to the Minister of National Revenue about the amount of Old Age Security pensions received by individuals.

The CHAIRMAN: Shall section 25 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 26 is this matter of solicitor-client privilege. I think the only thing new in it is to say—

Senator LEONARD: I think we should take a little time on section 26. This seems to be going a long way towards breaking the rule that is almost unbroken or invariable as regards the relations between solicitor and client. It seems to me that you are going to be in a position to ask a lawyer to get his cheques and accounts in records, and you will have the whole story of his relationship with his client, the amount of money he receives and the amount he pays out and the names of his clients and the names of the people concerned. That seems to me to be going a long way. I am wondering as to the necessity for it. What has happened to cause this? Secondly, how far has this been brought to the attention of the Barristers Association and to the Law Society? Perhaps we could hear about that?

Mr. IRWIN: The bill proposes to add to section 126A the underlined words. This section contains a number of provisions designed to protect solicitor-client privilege when tax investigations are carried out. These were introduced in 1956 at the suggestion of representatives of the Bar Association. In the past year it became evident, as a result of a court decision, that the definition of solicitor-client privilege was deficient in some respects. Representatives of the Bar Association suggested the wording that we find in the amendment.

Mr. HOPKINS: This is exactly the wording, I believe?

Mr. IRWIN: Yes, sir.

Senator FLYNN: That is strange.

Senator LEONARD: That is satisfactory to me.

Senator CONNOLLY (*Ottawa West*): This is usual in the special investigations under section 126?

The CHAIRMAN: Yes.

Mr. IRWIN: Section 126A is a fairly lengthy section dealing with solicitor-client privilege.

Hon. SENATORS: Carried.

The CHAIRMAN: Section 27.

Mr. IRWIN: Section 27 is to assist in the administration of the act. In certain cases it is necessary to prove that amounts of tax which should have been remitted to the Receiver General have not in fact been received. This permits an official charged with the keeping of the records to take an affidavit to show that he in fact has not received the amounts in question.

Senator FLYNN: When you say "should have been received" you mean "claimed"? It does not mean that this amount is due.

Mr. IRWIN: Yes, sir, amounts that the department claims it should have received and it has not received.

Senator FLYNN: The claim?

The CHAIRMAN: What they say is that this amount has not been received. The question of whether he owes it or not still has to be settled.

Senator FLYNN: I hope so.

The CHAIRMAN: I hope so, too.

Shall section 27 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We have already dealt with section 28, subsection (1), (2) and (3). Now we come to subsection (4), which has been called sometimes "rooting out some tax havens".

Mr. IRWIN: Yes, sir. This amendment provides that a company which was incorporated in Canada and is now resident in Canada shall be deemed to continue to be resident in Canada in the future, and all companies incorporated in Canada in future shall be deemed to continue to be resident in Canada for tax purposes.

The CHAIRMAN: It becomes effective, I would say, in its application only if you still have jurisdiction over the individuals or if the assets are still within the jurisdiction.

Mr. IRWIN: Well, yes, sir.

The CHAIRMAN: Shall subsection (4) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (5) is just the application?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: Shall subsection (5) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 29.

Mr. IRWIN: This is a technical amendment to deal with a situation where a company has been newly incorporated or newly created. It is an amendment to the provision for determining when a company has a degree of Canadian ownership. It was found that a newly created company might have an initial taxation year of, say, 20 days. It could qualify as a company with a degree of Canadian ownership for its first taxation year of 20 days; but it would not have the necessary 60 days in which to qualify for its second taxation year. So this amendment is proposed to take care of this rather unusual situation.

The CHAIRMAN: Shall section 29 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 30 simply puts in the current percentages of abatement payable to the provinces.

Mr. IRWIN: Yes, sir. This is designed to ensure that the tax reduction will not reduce the amount that is paid to the provinces under the Federal-Provincial Fiscal Arrangements Act.

The CHAIRMAN: Shall section 30 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Senator BOUFFARD: Before we close this discussion, would it not be proper to wait until Mr. Irwin has seen the minister about these annual payments for income tax purposes?

The CHAIRMAN: We could do better than that. At 9.30 in the morning we can ask the minister to come here and answer the questions himself.

Senator BOUFFARD: We do not have to have the minister. If Mr. Irwin speaks to the minister and gets the answers from him then he can tell us about it. You see what I am concerned about is when a man has received a cash amount he is exempt from all taxation, but if instead of receiving a cash amount he has a term contract or if he has sold at a price to be paid over 20 years, it seems to me that it is unfair to tax that capital while if he had received a cash payment at the beginning he would not have had to pay any tax on it.

The CHAIRMAN: Mr. Irwin, do you understand the point Senator Bouffard is making?

Mr. IRWIN: You are asking, senator, if it would be possible to consider an amendment to exempt from the clause or amendment here those individuals who have a contract providing for royalties where that contract was signed prior to budget date?

Senator BOUFFARD: Yes, and where it provided for payments of a cash amount of money.

Mr. IRWIN: This amendment deals with royalties and similar payments.

The CHAIRMAN: Then I do not put the question tonight about reporting the bill without amendment. We can deal with that tomorrow morning when Mr. Irwin comes and tells us the answers and we can debate it if necessary.

Senator LANG: What about the other budget resolutions about allowances for pollution control and matters of that kind?

Mr. IRWIN: They were not budget resolutions in the strict sense; they were announcements made in the budget speech, and the announcement was that the income tax regulations dealing with capital cost allowances would be accelerated to provide accelerated capital cost allowances in respect of property acquired for the purposes mentioned.

Senator HUGESSEN: No legislation is required as a result of that?

Mr. IRWIN: No.

Senator LANG: What about legislation governing expenses involved in research and similar matters?

Mr. IRWIN: Legislation will be required to authorize the grants, but I am not sure where the legislation stands at the present time. I think the announcement said it would become effective only in 1966.

The CHAIRMAN: We shall adjourn now until 9.30 tomorrow morning.

The committee adjourned.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 30, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-118, to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act, met this day at 9.50 a.m. to give further consideration to the bill.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, we now continue our consideration of Bill C-118. When we adjourned yesterday we had carried all the sections, but we delayed the final motion to report the bill without amendment at the request of Senator Bouffard. Mr. Irwin was to discuss with the minister the suggestion that Senator Bouffard made. Are you ready to deal with that now, Mr. Irwin?

Mr. IRWIN: Yes, sir.

When clause 19 was under consideration in this committee last evening several senators commented on the fact that the amendment would make taxable in 1965 and future years certain royalties which might be paid under an agreement or arrangement entered into before the date of this proposed legislation. The amendment under discussion would make taxable rents or royalties received by a taxpayer as consideration for a mining property that had been acquired by him as a result of his efforts as a prospector.

The amendment, as was mentioned last evening, is intended to restore this part of the law to what it was thought it provided before a decision of the Tax Appeal Board.

Before the committee rose last evening, Senator Bouffard asked if I would place before the Minister of Finance his concern about the application of this amendment in cases where a prospector, or a prospecting company, might have signed an agreement to receive royalties after the court decision but before the Income Tax Resolution was made public with the presentation of the budget. He requested that I ask the Minister of Finance if he would accept or consider an amendment to exclude from the application of clause 19 those taxpayers who had an agreement to receive royalties signed in the period between the court decision and the date of the budget speech.

Senator BOUFFARD: Including the man who went to court and in favour of whom the judgment was given.

Mr. IRWIN: I can report, Mr. Chairman, that I have spoken to the Minister of Finance as requested and the minister has directed me to tell you that he appreciates your careful examination of these complicated parts of the bill, and your desire that these changes be as fair as possible in their application. He recalled that the question of the effective date of the provision had been discussed at some length during the budget preparations. It was proposed at one time during those deliberations to make the change effective from the date of the court decision in 1963 because the interpretation placed upon this part of the law by the court was quite different from the way it had been previously administered, and it was suggested that taxpayers were not entitled to expect

that the law would not be changed. However, it was decided that to pass a law to change the tax treatment of amounts received in past years would be retroactive, and the decision was against such action.

Looking to the future the minister suggested it is not unfair or improper to make payments taxable for the future even though those payments have been exempt for one or two years. It would be nearly impossible to pass suitable tax legislation if it were accepted that exemptions could not be taken away or rates of tax increased on income received under agreements already signed.

The minister appreciates the concern of the honourable senators, but he has asked me to say that he does not believe he could justify making an amendment to clause 19.

The CHAIRMAN: Having heard this statement the last remaining question for the committee to consider is whether I should report the bill without amendment.

Senator CROLL: I move that the bill be reported without amendment.

Senator HUGESSEN: I second the motion.

The CHAIRMAN: Is the motion carried? Shall I report the bill without amendment?

Hon. SENATORS: Carried.

The committee adjourned.



Third Session—Twenty-sixth Parliament
1965

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 5

Complete Proceedings on Bill C-120,
intituled: "An Act to amend the Customs Tariff".

TUESDAY, JUNE 28, 1965

WITNESSES:

Department of Finance: J. Loomer, Acting Director, Tariffs. R. Y. Grey,
Director, International Economic Relations and Defence. *Department*
of National Revenue: J. G. Howell, Assistant Deputy Minister, Opera-
tions.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Blois	Hugessen	Reid
Bouffard	Irvine	Roebuck
Burchill	Isnor	Smith (<i>Kamloops</i>)
Choquette	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Lambert	Taylor
Crerar	Lang	Thovaldson
Croll	Leonard	Vaillancourt
Davies	Macdonald (<i>Brantford</i>)	Vien
Dessureault	McCutcheon	Walker
Farris	McKeen	White
Fergusson	McLean	Willis
Flynn	Molson	Woodrow—50.
Gélinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Brooks; and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, June 28th, 1965:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Macdonald, P.C., for second reading of the Bill C-120, intituled: "An Act to amend the Customs Tariff".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Macdonald, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 29, 1965.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 8.00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Pro-vencher*), Bouffard, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Croll, Farris, Fergusson, Flynn, Gouin, Hugessen, Irvine, Kinley, Lang, Leonard, McLean O'Leary (*Carleton*), Pearson, Pouliot, Power, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Vaillancourt, Walker and Woodrow. (27)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk and Chief, Committees Branch.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-120.

Bill C-120, An Act to amend the Customs Tariff, was read and considered.

The following witnesses were heard: *Department of Finance:* J. Loomer, Acting Director, Tariffs; R. Y. Grey, Director, International Economic Relations and Defence. *Department of National Revenue:* J. G. Howell, Assistant Deputy Minister, Operations.

On Motion duly put it was Resolved to report the said Bill without amendment.

At 8.20 p.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, June 29th, 1965.

The Standing Committee on Banking and Commerce to which was referred the Bill C-120, intituled: "An Act to amend the Customs Tariff", has in obedience to the order of reference of June 28th, 1965, examined the said Bill and now reports the same without any amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, June 29, 1965.

The Standing Committee on Banking and Commerce, to which was referred Bill C-120, to amend the Customs Tariff, met this day at 8.00 p.m. to give consideration to the bill.

Senator Salter A. Hayden, in the Chair.

The CHAIRMAN: I call the meeting to order. We have before us tonight two bills, a bill to amend the Customs Tariff, C-120, and a bill to amend the Income Tax Act, C-118. It is the intention to proceed first with the Customs Tariff.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

We have present from the Department of Finance, Mr. J. Loomer, Acting Director of Tariffs, and Mr. R. Y. Grey, Director, International Economic Relations and Defence. From the Department of National Revenue we have Mr. J. G. Howell, Assistant Deputy Minister, Operations.

The Customs Tariff bill is a very short one. Mr. Loomer is going to introduce the bill for our consideration. Since, as I say, it is a very short bill let us deal with it section by section. On section 1 of the bill are there any questions, or would you like a short statement from Mr. Loomer?

Senator O'LEARY (Carleton): Perhaps we could have a short statement.

The CHAIRMAN: Right.

Mr. J. Loomer, Acting Director of Tariffs, Department of Finance: Section 1 provides authority for the re-numbering of items in the Customs Tariff by Order in Council. At the moment both numbers and letters are used in the tariff, and it is proposed to convert to a purely numerical system which will permit better co-relation between individual tariff items and related statistics. There are approximately 2,500 tariff items and sub-items, and since there is to be no change of substance it is proposed to do the renumbering by Order in Council.

The CHAIRMAN: Any questions? Shall section 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 2.

Mr. LOOMER: This resolution provides for a miscellaneous group of amendments affecting 11 tariff items. Five of them extend the duration of the existing items for another 12 months. The items affected are 209e, 210i, 263e, which are continued until December 31, 1966, and items 440m(1) and 440n(1), which are continued until July 1, 1966. The other amendments are either of a technical or relieving nature.

The CHAIRMAN: Are there any questions?

Senator CROLL: How does this change it?

The CHAIRMAN: Five of the items are extended for a year.

Senator CROLL: And the sixth?

Mr. LOOMER: One item has been made statutory. One item was put in by order in council, and it is now statutory.

The CHAIRMAN: That is the same item.

Senator CROLL: When?

Mr. LOOMER: A provision has been added to the item to include repair parts. This could not be done by order in council. The provision with respect to repair parts requires action by Parliament.

The CHAIRMAN: Which item is that?

Mr. LOOMER: 445z.

Senator PEARSON: What items are extended?

Mr. LOOMER: Items 209e, 210i, and 263e are extended from December 31, 1965 for one year. And items 440m and 440n are extended from June 30, 1965.

Senator PEARSON: Why a year?

Mr. LOOMER: The first three items are in the Chemical Reference and it is hoped that the board's report will be available before that time. With respect to the other two items we may wish to take another look at them after the Kennedy Round of tariff negotiations.

The CHAIRMAN: So you are just getting a short term extension for one year. Did you get the answer to your question, Senator Croll? You were referring to Item 445z. This is razors.

Senator CROLL: I remember your explanation of it in the house, and it seemed to be a nice protective measure. I am against protection, so it does not do me much good.

The CHAIRMAN: It is not protection because under the British preferential tariff and the most-favoured nation tariff these things are allowed to come in free so that Canadian manufacturers can compete with the imported goods. Have you anything to say about the remaining items, Mr. Loomer?

Mr. LOOMER: In Item 384 the words "when imported by manufacturers" have been deleted so that people other than manufacturers can import their own skelp, plate, sheet or strip.

The CHAIRMAN: In that item you are trying to get away from end use?

Mr. LOOMER: No, it is still an end use item, but it was previously restricted to a manufacturer.

Item 388 is a new item providing for foundry moulding snap flasks and jackets for use therewith.

Item 541a—the only change there is that the word "knitting" has been added.

The wording of item 695c has been amended. This is really a technical change. Previously these sculptures had to be certified by the director of the National Gallery as being of a cultural nature, and now they will enter as other goods for import purposes.

Item 695e is a new item, providing for hand-woven tapestries.

The CHAIRMAN: Does section 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 3?

Mr. LOOMER: This is also a new item which provides for a 99 per cent drawback on knitted netting which is used in the manufacture of shapes for women's or children's headgear.

The CHAIRMAN: Does section 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4 is the prohibited goods section?

Mr. LOOMER: Yes. There is an amendment to Item 1220 which covers offensive weapons. The subsections provide for the goods which are not prohibited, and in subsection (b) the words "Form 42" have been removed. In subsection (c) the words "military type rifles" have been deleted.

The CHAIRMAN: That does not really effect any change.

Mr. LOOMER: Not of any great substance.

Senator CROLL: If these changes do not affect anybody, or are not of any great substance, why are you making them? Everybody says that this does not mean anything, so we need not pay any attention to it, or that it is of no consequence. Why are these changes made?

The CHAIRMAN: The words "Form 42" are struck out because everybody has to register a gun.

Senator CROLL: Let us start over again. If this is of no substance then why bother Parliament with it?

The CHAIRMAN: It is nice to tidy up once in a while.

Senator CROLL: I have heard that before.

The CHAIRMAN: I have even heard you say it at some times, senator.

Senator LEONARD: Are not military rifles being brought in when they were not brought in before?

Mr. LOOMER: Military rifles will continue to come in under the exceptions, but automatic rifles will have to be treated under subsection (b). The ordinary standard or auto-loading rifle will continue to come in under subsection (c). This means that military rifles will be treated in the same way as other offensive weapons. If they are fully automatic they will come in under subsection (b); if they are not they will continue to come in under subsection (c).

Senator LEONARD: That is a change of some substance.

Mr. LOOMER: I said "great substance". Perhaps I should have emphasized the word "great".

The CHAIRMAN: Does subsection (4) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5?

Mr. R. Y. Grey, Director, International Economic Relations and Defence, Department of Finance: Perhaps I might speak to this, Mr. Chairman. This is one item which is set out in schedule D which deals with certain types of periodicals which, when this item comes into effect, will be prohibited entry. This is modelled closely on the recommendation of the royal commission which dealt with this subject, except for two points which, although they are more than points of detail, are not major points. One is that the prohibition does not apply to an issue which contains advertising of the type described, but to an issue subsequent to that. This is entirely for administrative reasons, to make it unnecessary for the customs officers to examine all periodicals as they enter Canada, but to deal with them after the event and to apply the prohibition to subsequent entries.

Also following a recommendation of the Royal Commission is the provision in item 1221(2). Some American magazines have a typically overflow circulation which contain advertising and which give some indication of a source of availability of service in Canada. With 5 per cent of such advertising space, publications can come in without invoking the prohibition.

I think that it can be argued that there are certain products, such as those advertised in publications like *Scientific American*, which are for very specialized markets in North America, and it would work a hardship on such publications if the existence of one such advertisement prohibited entry into Canada.

The CHAIRMAN: Any questions?

Senator O'LEARY (*Carleton*): How do you propose to police this?

Mr. GREY: I will ask Mr. Howell to answer that question.

The CHAIRMAN: Tell us how the administration will work it out, Mr. Howell?

Mr. J. G. Howell, Assistant Deputy Minister, Operations, Department of National Revenue: In the first place, Mr. Chairman, it is quite permissive for a publisher in a foreign country to submit publications to us prior to publication. He may seek a ruling from us and ask if it is prohibited within the meaning of item 1221, schedule C. If he gets such a ruling that it is prohibited he must take corrective measures, and if he does not we will prefer him. He can make an appeal to the deputy minister.

Senator O'LEARY (*Carleton*): Have you any idea of the number of American magazines or periodicals containing this sort of advertising coming to Canada? How many come in each month or week?

Mr. HOWELL: No, sir, we have no idea.

Senator O'LEARY (*Carleton*): Would it be over 100?

Mr. HOWELL: I would say so.

Senator O'LEARY (*Carleton*): It could be 200, in fact?

Mr. HOWELL: It could be.

Senator O'LEARY (*Carleton*): Are you going to tell me that you are going to police those each month?

Mr. HOWELL: Well, I sent for samples. If and when the act is passed, the regulations and a copy of the act will be sent to all publishers.

Senator O'LEARY (*Carleton*): The reason I ask you is that we considered this in the royal commission and we are told by people who are supposed to know that this would be an extremely difficult thing to police, so we say, "Oh, well, excuse them all." Personally, I am not too concerned about this. I do not think it is an important thing.

The CHAIRMAN: Any other questions? Senator Croll?

Senator CROLL: I think the other gentleman spoke about after the event, meaning that if someone sends in the periodical and it gets through, and you find out afterwards that he has not lived within the regulations, how long after the event will the regulations apply?

Mr. GREY: The phrase in both sections is "for immediately preceding issues."

Senator CROLL: That could be a month?

Mr. HOWELL: It could be.

Senator CROLL: And after that you are done for?

Mr. HOWELL: That is right, until that number of issues has passed.

The CHAIRMAN: Senator Leonard?

Senator LEONARD: Then if there are four issues that do not contain the material which justifies the prohibition, automatically the publication can come in?

Mr. HOWELL: That is right.

Senator HUGESSEN: Dealing with the policing again, under item 1221 you talk about regulations prescribed by the Governor in Council. He will make general regulations covering everything, will he?

Mr. HOWELL: The regulations would cover the prohibition.

Senator HUGESSEN: He will not make regulations for each occasion; he will make general regulations?

Mr. HOWELL: Yes.

Senator HUGESSEN: Item 1221 says, "if such preceding issue has . . . under regulations prescribed by the Governor in Council, been found to be an issue of a special edition," Found by whom?

Mr. HOWELL: As found by the deputy minister.

Senator O'LEARY (*Carleton*): Or by his officials?

Mr. HOWELL: Yes.

Senator O'LEARY (*Carleton*): Somebody has to do the finding.

Senator HUGESSEN: That is what I was asking.

Mr. HOWELL: In the name of the deputy minister.

Senator FLYNN: In your operation to enforce this provision, have you any idea of the proportion of magazines and periodicals that could be affected eventually, if the officials of the department started to examine the periodicals coming into Canada.

Mr. HOWELL: No, sir.

Senator FLYNN: Have you any idea if this will have any effect at all in practice?

Mr. HOWELL: No, sir, we do not know, we have had no such law before.

Senator FLYNN: It may not mean anything in practice?

Mr. HOWELL: It may or may not. We do not know.

Senator PEARSON: In that case, why are you bringing the rule in?

The CHAIRMAN: All he says is that he cannot say one way or another; and he did not bring the rule in, this is a matter of Government policy. Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 6, commencement, coming into effect, carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

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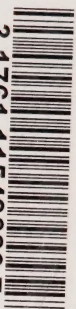
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